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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 568

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

SWIFT & COMPANY ET AL.

No. 569

AMERICAN WHOLESALE GROCERS ASSOCIATION ET AL., APPELLANTS,

vs.

SWIFT & COMPANY ET AL.

No. 570

NATIONAL WHOLESALE GROCERS ASSOCIATION, APPELLANT,

vs.

SWIFT & COMPANY ET AL.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED DECEMBER 10, 1931

(36,382, 36,383, 36,384)

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APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

VOL. I

INDEX

	Original	Print
Record from supreme court of District of Columbia	a	1
Caption (omitted in printing)	a	
Petition	1	1

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 12, 1932

	Original	Print
Answer of Swift & Company and others	18	23
Armour defendants	37	49
Morris defendants	58	70
Wilson defendants	82	108
Cudahy defendants	96	127
Western Meat Company and others	106	139
New England Dressed Meat & Wool Company and others	111	145
Stipulation as to decree	115	150
Decree and consents	118	153
Petition of Southern Wholesale Grocers Association and others for leave to intervene	130	170
Order granting petition to intervene	133	174
Intervening petition of Southern Wholesale Grocers Association and others	134	174
Petition of National Wholesale Grocers Association for leave to intervene	138	179
Motion to set aside order granting leave to intervene, &c.	141	182
Amended petition of Southern Wholesale Grocers' Association	141	183
Fiat of Justice Stafford	145	186
Memorandum of decision on motion to strike out, &c.	145	187
Order overruling motion to strike out	146	188
Order allowing intervening petition to be filed	146	188
Petition in intervention of National Wholesale Grocers Association	146	189
Amendment praying leave to substitute name	149	190
Memorandum opinion by Justice Bailey	150	191
Decree suspending operation of consent decree	154	194
Final decree on mandate	155	195
Petition of Swift group of defendants for extension of time	158	196
Petition of Armour group of defendants for extension of time	160	198
Amended petition of Swift & Company and others for modification of consent decree	164	200
Exhibit "A"—Excerpts from report of April 8, 1922, on stockyards	222	245
Amended petition of Armour & Company and others for modification of consent decree	235	255
Motion of interveners to dismiss petition of Swift & Company et al	303	310
Motion of interveners to dismiss petition of Armour & Company et al	308	313
Motion of intervener National Wholesale Grocers Association to dismiss amended petition of Swift & Company et al	309	315
Motion of intervener National Wholesale Grocers Association to dismiss amended petition of Armour & Company et al	310	316

	Original	Print
Opinion of court on motion to dismiss amended petitions	311	317
Order overruling motions to dismiss	314	319
Consent of New England Dressed Meat and Wool Company and others to modification of decree	315	320
Answer of the United States to amended petition of Swift & Company et al	316	321
Answer of the United States to amended petition of Armour & Company et al	317	321
Answer of American Wholesale Grocers' Association et al. to amended petition of Swift & Company et al.	318	322
Answer of American Wholesale Grocers' Association et al. to amended petition of Armour & Company et al.	334	334
Answer of National Wholesale Grocers' Association to amended petition of Swift & Company et al	349	346
Answer of National Wholesale Grocers' Association to amended petition of Armour & Company et al	377	368
Extract from stenographic report of proceedings:		
Motion of National Wholesale Grocers' Association to dismiss	398	382
Objections of National Wholesale Grocers' Association to testimony	390	383
Objections of National Wholesale Grocers' Association to testimony	401	384
Statement of evidence	834	387
Order re transcript of record (omitted in printing)	835	
Testimony of John F. Daly	841	389
Clarence E. Batschelet	843	391
Charles A. Burmeister	844	391
Morse Salisbury	856	401
William L. Austin	856	402
Dr. O. C. Stine	857	402
H. H. Hulbert	857	402
Hutzel Metzger	859	404
Agreement re use of Moody's Industrial Manuals	860	404
Testimony of William A. Moody	861	405
Dr. Frank W. Miller	863	407
Clifford V. Gregory	871	415
Edwin W. James	874	417
Levon E. Truesdell	875	418
Oscar G. Mayer	875	419
H. C. Merritt, Jr	880	424
Frank A. Hunter	882	425
George A. Wyville	886	429
Abraham R. Goldberg	886	429
Andrew P. Miller	886	430
Henry Fischer	889	432
David G. Madden	890	433
Stipulation re testimony of witnesses 22 to 27	892	435

	Original	Print
Testimony of George L. Heil	894	437
Sederin L. Frey	896	438
Harry A. Shanz	897	439
Thomas W. Talliaferro	901	442
Henry Neuhoff	912	451
Joseph P. Murphy	915	454
Paul W. Trier	918	456
Frederick S. Snyder	920	457
Stipulation re testimony of witnesses 30 to 41	942	475
Testimony of F. E. Mollin	944	476
Wayland Magee	946	478
William H. Tomhave	947	479
Murdo Mackenzie	948	480
J. F. Walker	948	480
W. F. Renk	949	481
James Tod	951	482
R. N. Gunn	952	484
W. J. Fitts	953	485
James A. Hooper	954	485
J. H. Mercer	956	487
Winchester P. Wing	957	488
Tyler F. Snodgrass	961	491
William S. Clithero	962	492
Frank W. Wheeler	964	494
Henry C. Bohack	968	497
Herbert P. Brown	970	499
Frank P. Zimmerman	971	500
Elmer F. Panor	972	501
Edward W. Shineman	973	502
Harden F. Taylor	974	503
Victor H. Pelz	981	508
Excerpts from Petitioners' Exhibit 78	983	510
Testimony of Bruce McCulloch	994	521
Arthur H. Judge	995	522
F. H. Sidney	996	523
Arthur A. Millett	998	525
A. O. Nelson	1003	530
David Degan	1006	533
Albert E. Harris	1006	533
C. B. Heinemann	1007	534
Wm. S. Warfield	1012	538
Wm. S. Clithero (recalled)	1014	539
Stipulation of fact and testimony	1022	545
Testimony of F. Edson White	1081	600
John M. Chaplin	1114	639
Gustavus F. Swift	1122	645
Joseph A. McGinnes	1128	650
David K. Falvay	1130	651
Charles H. Hays	1130	652
Isaac Hoagland	1131	653
Wm. S. Clithero (recalled)	1138	658

	Original	Print
Testimony of John A. Hawkinson	1138	659
Nathan Strauss	1144	664
J. A. Revelle	1145	665
Charles S. Nelson	1156	675
T. E. Ray	1160	678
Edward A. Cudahy, Jr	1163	681
Dr. Paul H. Nystrom	1174	690
Harold H. Maynard	1191	703
Dr. Fred E. Clark	1193	704
Charles E. Baldwin	1195	705
Robert V. Fleming	1196	706
V. A. Pearson	1199	708
R. F. Eagle	1200	709
Joseph Conron	1201	711
George N. Pfarr	1202	711
Statement as to production, prepared by Wm. S. Clitherto	1208	717
First stipulation as to certain facts	1209	717
Second stipulation as to certain facts	1213	720
Third stipulation as to certain facts	1218	724
Fourth stipulation as to certain facts	1219	725
Testimony of Dr. Frank W. Miller	1221	725
E. C. Andrews	1234	737
Dr. Arthur W. Miller	1237	738
John A. Hartford	1238	739
Peter Van Beveren Bourterse	1244	745
Walter Kallbreier	1249	749
Donald Scheele	1250	750
John Coode	1251	751
Otto P. Kugler	1252	752
Ernest Buffett	1256	756
Jay D. Miller	1261	760
J. Frank Grimes	1264	761
Carl Bruner	1281	776
J. W. Herscher	1283	778
Y. P. Wilkinson	1286	780
S. M. Flickinger	1288	782
Roy L. Davidson	1291	785
William J. Mandell	1292	785
H. A. Ramsdel	1292	786
J. T. Griffin	1293	786
James Moore	1295	788
Bennett C. Nott	1300	792
John V. McInness	1300	793
Royal F. Clark	1301	793
J. Charles Lane	1307	798
Stipulation re certain exhibits	1307	799
Statement re testimony of certain witnesses	1313	803
Petitioner's Exhibit No. 3—Meat packing schedules according to value for 1927	1318	808

	Original	Print
Petitioner's Exhibit No. 4—Number of slaughtering and meat packing establishments in U. S.	1319	810
Petitioner's Exhibit No. 7—Statistics of meat production, consumption, and foreign trade of the U. S.	1320	811
Petitioner's Exhibit No. 10—Statement showing live stock slaughtered and total production of meat and lard for each of four principal packers for 1920 to 1929	1331	816*a*
Petitioner's Exhibit No. 46—Statement showing financial results of operations of 832 packers subject to the Packers and Stockyards Act for 1929.	1332	817
Petitioner's Exhibit 47—Comparison of the operation of packers subject to the Packers and Stockyards Act from 1925 to 1929	1333	817
Petitioner's Exhibit No. 48—Receipts of live stock at stockyards posted under the Packers and Stockyards Act for 1929	1334	818
Petitioner's Exhibit 49—Crops and Markets for January, 1930, showing receipts and disposal of live stock at public stockyards for 1928 and 1929.	1336	821
Petitioner's Exhibit No. 57—Financial statement of Oscar Mayer & Co	1368	825
Petitioner's Exhibit No. 69—Financial record of 12 grocery chains as reported by Moody's Manual	1369	826*a*
Petitioner's Exhibit 70—Same for 8 foor companies.	1384	838*a*
Petitioner's Exhibit No. 71—Same for 15 non-defendant packers	1394	866*a*
Petitioner's Exhibit No. 72—Financial record of 4 defendant packers	1412	888*a*
Petitioner's Exhibit No. 73—Recapitulation of financial record of 4 classes of companies	1414	888*b*
Petitioner's Exhibit No. 74—Financial statement of H. C. Bohack Co	1416	889
Petitioner's Exhibit No. 85—Summary of Swift & Co.'s competitors in branch house territories	1417	889
Petitioner's Exhibit No. 86—Summary of Swift & Co.'s competitors in car route territories	1426	896
Petitioner's Exhibit No 89—Slaughterers, meat packers, and meat processors handling unrelated articles	1440	909
Petitioner's Exhibit No. 90—Chain stores performing meat packing operations	1453	921
Petitioner's Exhibit No. 105—Financial statement of Armour & Co. and Morris & Co., 1920 to 1929	1464	937
Petitioner's Exhibit No. 106—Same for Armour & Co. and Morris & Co. separately, 1920-1923	1465	937
Petitioner's Exhibit No. 107—Domestic sales of edibles of Armour & Co., 1920 to 1929	1466	938
Petitioner's Exhibit No. 108—Domestic sales of edible meat and meat products of Armour & Co., 1920 to 1929	1467	938

	Original	Print
Petitioner's Exhibit No. 109—Statement showing composition of customers of Armour & Co.	1468	939
Petitioner's Exhibit No. 110—Armour & Co. chain store sales, 1928 to 1930	1469	939
Petitioner's Exhibit No. 111—Financial statement of Armour & Co., 1920 to 1929	1470	940*a*
Petitioner's Exhibit No. 112—Net worth of Armour & Co., 1920 to 1929	1471	941
Petitioner's Exhibit No. 113—Armour sales of unrelated lines, 1919 to 1930	1472	941
Petitioner's Exhibit No. 114—Domestic sales of Armour & Co. in tonnage, 1920 to 1929	1473	942*a*
Petitioner's Exhibit No. 119—Armour & Company branch houses, 1920 to 1930	1474	943
Petitioner's Exhibit No. 120—Armour & Co. branch house sales, 1920 to 1929	1475	943
Petitioner's Exhibit No. 121—Armour & Co. cars owned, 1920 to 1929	1476	944
Petitioner's Exhibit No. 122—Armour & Co. car routes, 1920 to 1929	1477	944
Petitioner's Exhibit No. 123—Towns served by Armour & Co. branch houses and car routes	1478	945
Petitioner's Exhibit No. 124—Armour & Co. purchases and sales of unrelated commodities monthly since August 1, 1929	1479	945
Petitioner's Exhibit No. 127—Financial record of Kraft-Phenix Cheese Corp., 1922 to 1930	1480	946
Petitioner's Exhibit No. 135—Wholesalers owning retail stores, 1920 and 1930	1483	949
Petitioner's Exhibit No. 136—Swift & Co. sales and earnings, 1920 to 1929	1486	953
Petitioner's Exhibit No. 137—Swift & Co. sales of edible products in the U. S., 1929	1487	954
Petitioner's Exhibit No. 138—U. S. production of butter and percentage produced by Swift & Co., 1920 to 1929	1488	954
Petitioner's Exhibit No. 139—U. S. consumption of cheese and percentage of sales of Swift & Co., 1920 to 1929	1489	955
Petitioner's Exhibit No. 140—Estimated dressed weight of poultry raised in U. S. and percentage of sales of Swift & Co., 1920 to 1929	1490	955
Petitioner's Exhibit No. 141—U. S. egg production and percentage of sales of Swift & Co., 1920 to 1929	1491	956
Petitioner's Exhibit No. 142—Swift & Co. sales, 1920 to 1929	1492	956
Petitioner's Exhibit No. 143—Swift & Co. branch houses, refrigerator cars, and car routes, 1920 to 1929	1493	956

	Original	Print
Petitioner's Exhibit No. 144—Swift & Co. branch house sales, 1920 to 1929	1494	957
Petitioner's Exhibit No. 145—Swift & Co. branch houses and packing houses, markets, and expense per cwt., 1923 to 1930	1495	958*a*
Petitioner's Exhibit No. 146—Swift & Co. car routes volume, expense, and expense per cwt., 1923 to 1929	1496	958*a*
Petitioner's Exhibit No. 153—Statement concerning Armour branch houses	1497	959
Petitioner's Exhibit No. 155—Comparison average yearly results of Swift & Co. branch houses in New York district	1498	960
Petitioner's Exhibit No. 157—Complaint and decision in matter of Secretary of Agriculture vs. Armour & Co. et al	1499	960
Petitioner's Exhibit No. 158—Report of Hon. George Sutherland and Hon. Henry W. Anderson	1516	977
Petitioner's Exhibit No. 159—Report of Hon. Henry W. Anderson	1550	999
Petitioner's Exhibit No. 165—Excerpts from brief of Armour and Co. and others in I. C. C. Docket No. 10745	1569	1012
Petitioner's Exhibit No. 166—Excerpts from National Wholesale Grocery Assn. brief in I. C. C. Docket No. 10745	1578	1018
Petitioner's Exhibit No. 166*a*—Excerpts from reply brief of National Wholesale Grocery Assn. in I. C. C. Docket No. 10745	1585	1023
Government's Exhibit No. 4—Letter showing A. & P. purchases from packers	1593	1028
Government's Exhibit No. 5—Letter showing A. & P. annual purchases from certain manufacturers.	1594	1030
Government's Exhibit No. 6—Contract of Armour & Co. with Producers Warehouse Co	1596	1031
Government's Exhibit No. 7—Packers condensed statement of operations, 1929	1601	1036*a*
Government's Exhibit No. 8—Same for 1928	1602	1036*b*
Government's Exhibit No. 9—Same for 1927	1603	1036*c*
Government's Exhibit No. 10—Same for 1926	1604	1036*d*
Government's Exhibit No. 11—Same for 1925	1605	1036*e*
Government's Exhibit No. 12—Same for 1924	1606	1036*e*
Government's Exhibit No. 13—Big Four condensed statement of operations, 1929	1607	1036*f*
Government's Exhibit No. 14—Same for 1928	1608	1036*f*
Government's Exhibit No. 15—Same for 1927	1609	1036*f*
Government's Exhibit No. 16—Same for 1926	1610	1036*g*
Government's Exhibit No. 17—Same for 1925	1611	1036*g*
Government's Exhibit No. 18—Same for 1924	1612	1036*g*
Government's Exhibit No. 19—Statement showing comparisons of net sales of Big Four with totals		

	Original	Print
of Federally inspected slaughterers and others for 1929 and 1928	1613	1036*h*
Government's Exhibit No. 20—Same for 1927, 1926, and 1925	1614	1036*h*
Government's Exhibit No. 21—Statement showing comparison of percentages of sales and profits of Big Four packers and others for 1929 and 1928	1617	1038*a*
Government's Exhibit No. 22—Same for 1927 and 1926	1619	1038*a*
Government's Exhibit No. 23—Same for 1925 and 1924	1621	1038*a*
Government's Exhibit No. 24—Statement showing purchases of live stock by packers reporting under Packers and Stockyards Act for 1929	1622	1038*b*
Government's Exhibit No. 25—Same for 1928	1623	1038*c*
Government's Exhibit No. 26—Same for 1927	1624	1038*d*
Government's Exhibit No. 27—Same for 1926	1625	1038*e*
Government's Exhibit No. 29—Tabulation of wholesale and retail prices of lamb	1626	1038*f*
Government's Exhibit No. 30—Tabulation of wholesale and retail prices of beef	1627	1038*g*
Government's Exhibit No. 31—Tabulation of wholesale and retail prices of pork	1628	1038*h*
Opinion of court, Bailey, J	1629	1039
Order modifying consent decree	1650	1060
Order correcting order modifying consent decree	1653	1062
Petitioning defendants' requests for findings of fact and conclusions of law	1654	1063
Government's request for findings of fact	1664$_c$	1070
Interveners' proposed findings of fact	1680	1082
Government's objections to petitioning defendants' requests for findings of fact	1695	1093
Interveners' objections to petitioning defendants' requests for findings of fact, etc	1698	1096
Petitioning defendants' objections to Government's request for findings of fact	1701	1098
Amendment to petitioning defendants' objections to Government's request for findings of fact	1710	1107
Objections of petitioning defendants to interveners' requests for findings of fact	1713	1109
Findings of fact of court and conclusions of law	1715	1110
Government's exceptions to findings of fact	1723	1115
Interveners' exceptions to findings of fact	1724	1116
Government's assignments of error	1727	1118
Assignments of error of American Wholesale Grocers Association et al	1730	1120
Assignments of error of National Wholesale Grocers Association	1733	1122
Government's petition for appeal	1737	1125

	Original	Print
Order allowing appeal	1738	1126
Citation and service.....(omitted in printing)..	1739	
Notices of appeal and acknowledgments:		
Counsel for American Wholesale Grocers Association	1741	1127
Counsel for National Wholesale Grocers Association	1742	1127
Counsel for certain Wilson defendants	1743	1128
Counsel for Cudahy Packing Co	1745	1129
Service acknowledged by Nelson Morris for Morris interests	1746	1130
Counsel for Western Meat Co., Oakland Meat & Packing Co. and Nevada Packing Co	1747	1131
Petition of American Wholesale Grocers Association and others for appeal to Supreme Court of the United States	1748	1131
Order granting appeal	1749	1132
Memorandum: Undertaking, $100, on appeal of American Wholesale Grocers Association et al. approved and filed	1749	1133
Citation on appeal of American Wholesale Grocers Association, intervener-appellant, and others (omitted in printing)	1750	
Notice on appeal by American Wholesale Grocers Association and others	1752	1133
Affidavit of service for certain companies by William Burke Williamson, attorney	1754	1134
Petition for appeal by National Wholesale Grocers Association, intervener	1757	1136
Order allowing appeal of National Wholesale Grocers Association, intervener	1758	1137
Memorandum: Undertaking on appeal for $100 on behalf of National Wholesale Grocers' Association of the United States approved and filed	1759	1137
Citation on appeal of National Wholesale Grocers' Association (omitted in printing)	1760	
Notice of appeal of National Wholesale Grocers' Association	1762	1138
Admission of service, &c	1763	1138
Affidavit of William L. Hanaway as to service	1765	1139
Acknowledgment of service of petition for appeal, etc., by W. R. Brown and J. D. Cooney, attorneys for New York-Wilson Company et al	1767	1140
Petition of George B. Robbins	1768	1141
Affidavit of George B. Robbins	1770	1142
Order suspending decree as to George B. Robbins	1772	1144
Petition of Robert J. Dunham	1773	1144
Affidavit of Robert J. Dunham	1775	1146
Order suspending decree as to Robert J. Dunham	1777	1147
Petition of Fred L. Washburn	1778	1148
Order suspending decree as to Fred L. Washburn	1779	1149

	Original	Print
Petition of Morris & Company, etc., for modification of consent decree	1780	1150
Affidavit of M. E. Smith	1781	1151
Order granting prayer of petition of Morris & Company.	1783	1153
Order of continuance for hearing of cause	1785	1154
Order further continuing hearing	1786	1155
Order further continuing hearing	1787	1156
Order further continuing hearing	1788	1156
Order allowing certain papers in the record on appeal to be filed nunc pro tunc	1789	1157
Stipulation	1790	1157
Præcipe for designation of record on appeal of the United States	1792	1159
Præcipe for record of American Wholesale Grocers Association and others	1796	1161
Notice of filing præcipe and service accepted	1798	1163
Acknowledgments of service	1799	1164
Affidavit of William Burke Williamson as to service	1803	1166
Intervener-appellant's præcipe	1804	1166
Notice of filing præcipe	1807	1169
Acknowledgments of service	1808	1169
Order re transcript of record, &c	1812	1172
Præcipe of Swift & Company et al. of additional parts of record on appeal	1815	1174
Stipulation for inclusion of exhibits in record	1818	1176
Memoranda: Time for docketing case extended; orders extending time for filing præcipes	1819	1177
Clerk's certificate (omitted in printing)	1820	
Statement of points to be relied upon and designation to print entire record, case No. 568	1821	1177
Statement of points to be relied upon and designation as to printing record, case No. 569	1828	1181
Statement of points to be relied upon and designation as to printing record, case No. 570	1833	1183

[fol. a] [Caption omitted]

[fol. 1]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In Equity. No. 37623

UNITED STATES OF AMERICA, Petitioner,

v.

SWIFT & COMPANY, ARMOUR AND COMPANY, MORRIS & COMPANY, Wilson & Co., Inc., and The Cudahy Packing Company et al., Defendants

PETITION—Filed February 27, 1920

To the honorable Judges of the Supreme Court of the District of Columbia, sitting in equity:

The United States of America, by John E. Laskey, its attorney for said district, and by Isidor J. Kresel, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General, they being severally duly authorized to act in said capacities by proper lawful authority, acting under the direction of the Attorney General of the United States, brings this proceeding in equity against Swift and Company, a corporation organized under the laws of the State of Illinois; Armour and Company, a corporation organized under the laws of the State of Illinois; Morris & Company, a corporation organized under the laws of the State of Maine; Wilson & Co. (Inc.), a corporation organized under the laws of the State of New York; the Cudahy Packing Company, a corporation organized under the laws of the State of Maine (these corporations are hereinafter referred to as the parent companies), and the following-named corporations and individuals, to wit:

Armour Defendants

Corporations:

Armour & Company, a corporation organized and existing under the laws of the State of New Jersey; Armour &

Company, a corporation organized and existing under the laws of the State of Kentucky; Armour & Company, a corporation organized and existing under the laws of the State of Texas; Armour & Company (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; The Anglo American Provision Company, a corporation organized and existing under the laws of the State of Illinois; The Colorado Packing and Provision Company, a corporation organized and existing under the laws of the State of Colorado; Fowler Packing Company, a corporation organized and existing under the laws of the State of Maine; Hammond Packing Company, a corporation organized and [fol. 2] existing under the laws of the State of Illinois; The New York Butchers Dressed Meat Company, a corporation organized and existing under the laws of the State of New York; Atlantic Hotel Supply Company (Inc.), a corporation organized and existing under the laws of the State of New York.

Swift Defendants

Corporations:

Swift & Company, a corporation organized and existing under the laws of the State of West Virginia; Swift & Company (Inc.), a corporation organized and existing under the laws of the State of Kentucky; Swift & Company (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; Swift & Company, a corporation organized and existing under the laws of the State of Maine; Swift Beef Company, a corporation organized and existing under the laws of the State of Maine; United Dressed Beef Co. of New York, a corporation organized and existing under the laws of the State of New York; J. J. Harrington & Company (Inc.), a corporation organized and existing under the laws of the State of New York; Bimbler Company, a corporation organized and existing under the laws of the State of New Jersey; The G. H. Hammond Company, a corporation organized and existing under the laws of the State of Michigan; Omaha Packing Company, a corporation organized and existing under the laws of the State of Kentucky; Plankinton Packing Company, a corporation organized and existing under the laws of the State of Wisconsin; Sturtevant & Haley Beef & Supply Company, a corporation organized and existing under

the laws of the State of Massachusetts; E. K. Pond Packing Company, a corporation organized and existing under the laws of the State of Illinois; Van Wagenen & Shickhaus Company, a corporation organized and existing under the laws of the State of New Jersey; Western Packing Company, a corporation organized and existing under the laws of the State of Colorado; Hammond Beef Company, a corporation organized and existing under the laws of the State of Michigan; Omaha Meat Company, a corporation organized and existing under the laws of the State of California; A. Canfield Commission Company, a corporation organized and existing under the laws of the State of New Jersey; H. C. Derby Company, a corporation organized and existing under the laws of the State of New York; Metropolitan Hotel Supply Company, a corporation organized and existing under the laws of the State of Maine; Vermont Supply Company, a corporation organized and existing under the laws of the State of Massachusetts; The Hotchkiss Beef Co., a corporation organized and existing under the laws of the State of New York; F. & C. Crittenden Company, a corporation organized and existing under the laws of the State of New York; George Nye Company, a corporation organized and existing under the laws of the State of Massachusetts; H. L. Handy Company, a corporation organized and existing under the laws of the State of Massachusetts; Swift Coats Company, a corporation organized and existing under the laws of the State of Massachusetts; New England Dressed Meat & Wool Company, a [fol. 3] corporation organized and existing under the laws of the State of Maine; North Packing & Provision Company, a corporation organized and existing under the laws of the State of Maine; The Sperry & Barnes Company, a corporation organized and existing under the laws of the State of Connecticut; John P. Squire & Company, a corporation organized and existing under the laws of the State of Maine; John P. Squire & Company (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; John P. Squire & Company Incorporated, a corporation organized and existing under the laws of the State of Rhode Island; Springfield Provision Company, a corporation organized and existing under the laws of the State of New Hampshire; White, Pevey & Dexter Com-

pany, a corporation organized and existing under the laws of the State of Maine.

Morris Defendants

Corporations:

Morris Packing Company, a corporation organized and existing under the laws of the State of Maine; Morris & Company, a corporation organized and existing under the laws of the State of New Jersey; Morris & Company, a corporation organized and existing under the laws of the State of Louisiana; Morris & Company, of Pennsylvania, a corporation organized and existing under the laws of the State of Pennsylvania; Joseph Stern & Sons (Inc.), a corporation organized and existing under the laws of the State of New York; Brooklyn Beef & Provision Co., a corporation organized and existing under the laws of the State of New York; Condit Beef & Provision Company, a corporation organized and existing under the laws of the State of New Jersey; Corwin Wilde Company, a corporation organized and existing under the laws of the State of Massachusetts; Donnelly & Company (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; National Hotel Supply Company, a corporation organized and existing under the laws of the State of Illinois; Chamberlain & Company (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; J. M. Wilson Company, a corporation organized and existing under the laws of the State of Massachusetts; Middletown Beef & Provision Company, a corporation organized and existing under the laws of the State of Massachusetts; Glenn & Anderson Co., a corporation organized and existing under the laws of the State of Illinois.

Wilson Defendants

Corporation:

Wilson & Co., a corporation organized and existing under the laws of the State of New Jersey; Wilson & Co. (Inc.), a corporation organized and existing under the laws of the State of Nevada; Wilson & Co. (Inc.), of Louisiana, a corporation organized and existing under the laws of the State of Louisiana; Wilson & Co. (Inc.), of Oklahoma, a corpo-

ration organized and existing under the laws of the State of Oklahoma; South Dakota Provision Co., a corporation organized and existing under the laws of the State of South [fol. 4] Dakota; Gotham Hotel Supply Co. (Inc.), a corporation organized and existing under the laws of the State of New York; Standard Beef Co., a corporation organized and existing under the laws of the State of New York; Stiefel-O'Mara Co. (Inc.), a corporation organized and existing under the laws of the State of New York; Drexel Packing Co., a corporation organized and existing under the laws of the State of Illinois; Albert Lea Packing Co. (Inc.), a corporation organized and existing under the laws of the State of Virginia; Mississippi Packing Co. (Inc.), a corporation organized and existing under the laws of the State of Virginia; Morton-Gregson Co., a corporation organized and existing under the laws of the State of Delaware; Paul O. Reymann Co., a corporation organized and existing under the laws of the State of West Virginia; Standard Provision Co., a corporation organized and existing under the laws of the State of New Jersey; Central Products Corporation, a corporation organized and existing under the laws of the State of Virginia.

Cudahy Defendants

Corporations:

Cudahy Packing Company of Nebraska, a corporation organized and existing under the laws of the State of Nebraska; Cudahy Packing Company of Alabama, a corporation organized and existing under the laws of the State of Alabama; Cudahy Packing Company of Louisiana (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; Nagle Packing Company, a corporation organized and existing under the laws of the State of New Jersey.

Other Defendants

Corporations:

Western Meat Company, a corporation organized and existing under the laws of the State of California; Oakland Meat & Packing Company, a corporation organized and existing under the laws of the State of California;

Nevada Packing Company, a corporation organized and existing under the laws of the State of Nevada.

These corporations are hereinafter referred to as the subsidiaries defendants.

Armour Defendants

Individuals:

J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurence H. Armour, Arthur Meeker, Robert J. Dunham, F. Edson White, George M. Willetts, Frederick W. Croll, George B. Robbins.

Swift Defendants

Individuals:

Louis F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, jr., Harold H. Swift, Alden B. Swift, George H. Swift, Laurence A. Carton, Frank S. Hayward, Charles A. Peacock, Wilfred W. Sherman, Wellington Leavitt, John M. Chaplin, William B. Traynor.

[fol. 5] Morris Defendants

Individuals:

Edward Morris, Nelson Morris, Louis H. Heymann, Charles M. Macfarlane, Harry A. Timmins.

Wilson Defendants

Individuals:

Thomas E. Wilson, Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D. Hopkins, Adolph E. Peterson, George H. Cowan, William C. Buethe, Carl F. Burrell, James C. Good.

Cudahy Defendants

Individuals:

Edward A. Cudahy, sr., Edward A. Cudahy, jr., Guy C. Shepard, John E. Wagner, Andrew A. Anderson, Emil A. Strauss, Frank E. Wilhelm, George Marples.

Other Defendants

Individuals:

Fred L. Washburn.

These defendants are hereinafter referred to as the individual defendants.

Court's Jurisdiction

The parent companies, either directly or through subsidiaries, are engaged in interstate and foreign commerce in (a) the purchase and slaughter of live stock, (b) the preparation and manufacture of dressed meats and edible by-products of the slaughter, (c) the curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal, (d) the production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used, (e) the manufacture, canning, or otherwise preparing for the market, sale, and distribution of food supplies other than meats (these are hereafter referred to as substitutes for meat foods, (f) the manufacture and sale of various other articles commonly purchased and used either by the producer of live stock, the companies transporting the live stock or dressed meats or the competitors of the parent companies (these are hereinafter referred to as unrelated commodities).

By the unlawful means and methods hereinafter set out and complained of, the parent companies and the subsidiaries, defendants, acting by and through their principal officers, who have been made defendants herein, have attempted to dominate, control, and monopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities herein referred to, and which are necessary to the life, health, and [fol. 6] welfare of the people of the United States. And by the same or similar methods the said parent companies and the subsidiaries defendants are attempting to increase and extend said monopoly, and are enabled thereby and do artificially control the supply and the price of the food supplies of the Nation.

The Government in instituting this proceeding invokes the general equity powers of this court in addition to the authority conferred upon it and contained in the act of Congress dated July 2, 1890, and entitled "An act to protect trade and commerce against unlawful restraints and monopolies," said act being commonly known as the Sherman antitrust law, and further conferred and contained in act amendatory thereof and supplemental or additional thereto, and particularly the act known as the Clayton Antitrust Act dated October 15, 1914, being entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," which said acts by special provisions give to this court jurisdiction in all such matters as are set out in the following petition.

Object to be Attained

This petition is filed and these proceedings are instituted to put an end to any and all monopolies which the defendants may have created or obtained in the interstate trade or commerce of live stock, meat products, and substitute foods, and to prevent the continuance of unlawful monopolies by the defendants, in the aforesaid trade or commerce in the products and commodities so described, and to deprive said defendants of certain instrumentalities, facilities, and advantages by which they have been enabled heretofore to more effectively perfect their attempts to monopolize; to compel the defendants to desist from dealing in certain of the substitute foods, and certain of the unrelated commodities; to limit in the manner hereinafter set forth, the interests which the individual defendants may have in corporations handling certain substitute foods and unrelated commodities; and to dissolve any and all contracts, combinations, and conspiracies in restraint of trade or commerce between the several States, which contracts, combinations, or conspiracies are more fully hereinafter described and to prevent said defendants from maintaining said contracts, combinations, or conspiracies with each other, or from entering into further contracts, combinations, or conspiracies with each other or with other persons.

The Nature of the Business and Method by Which it is Conducted

The principal business of each of the parent companies, conducted by each company directly or through its sub-

sidiaries, is the slaughter of live stock, consisting of cattle, hogs, sheep, and calves, the dressing of the carcasses, and the distribution of the dressed meat in interstate commerce through various means by which the dressed meat reaches the retail butchers and is by the retail butchers sold to the consumers.

[fol. 7] Each of these concerns is the successor or natural outgrowth of concerns of many years' standing. In their inception these concerns devoted themselves exclusively to the slaughter of live stock, the dressing of the carcass, and the sale of the dressed meat to retail butchers or consumers. The invention of what are known as route cars and refrigerator cars, by means of which the dressed meats might be hauled long distances and preserved for a considerable length of time, free from decay, enabled the parent companies to widely extend their market so as to make it nationwide, and further enabled them to slaughter the live stock near the source of supply.

As the demand for live stock grew in volume the institution known as the stockyard was evolved.

The Stockyards

The stockyard was and is in theory a public market place to which all who wish to either buy or sell may have free access and right to trade. The stockyards afford to the cattle raiser the opportunity to dispose of his livestock for an immediate cash price. Contiguous to such stockyards commission men, dealing exclusively in the sale of live stock, locate themselves. These commission men attend to the care of the live stock upon its arrival, effect the sale of the stock so consigned, attend to its weighing, collect the proceeds of the sale and remit to the consignor after deducting customary commission.

Stockyards render certain services to the shipper, for which they make charge, to wit, yardage (furnishing the facilities and performing the services of placing and keeping the animals in pens and watering them), feeding, and selling food, weighing, dipping, bedding cars, and often loading and reloading.

The yardage charges are ordinarily based upon an arbitrary price per head for each kind of stock, but in some instances they are based upon the hundredweight. The

charge for feed is fixed by the stockyards and includes the services rendered in feeding. The amount of the charges made or to be made for the other items of services or materials furnished is also fixed by the stockyards or those who are in control of the yards.

In connection with each stockyard there is need for certain facilities and conveniences for the benefit of either the shipper or the buyer of the live stock. The stockyards, by reason of its dominating position, control these conveniences and facilities.

Conveniences and Facilities Controlled by Stockyards

Packing-house Sites:

In furtherance of the tendency to centralize the market, it became of advantage to establish the slaughterhouses and packing plants either in, or immediately adjacent to, the stockyards. The stockyard companies generally own or control all the available land within the yards, and at most of the important yards the land surrounding the yards [fol. 8] is owned by companies controlled by the stockyard company or its principal stockholders. New packing companies, as a rule, can secure desirable packing sites only from the stockyard companies or from these land-development companies. The owners of stockyard companies are, therefore, in a position to determine what packing companies and how many plants shall be established at the yards.

Sites for Stockyard Banks and Cattle Loan Companies:

The cattle raiser is in many instances dependent upon banks or loan companies to finance him in the rearing of his live stock and until such times as the stock shall have been sold. From the nature of the business it is a great advantage to these banks to locate in or near stockyards. It, therefore, lies within the power of the owner of the stockyard companies to designate how many and which banks or loan companies may establish themselves at the yards.

Rendering plants:

While in transit or after reaching the yards, live stock often die either from disease or accident. The stockyard

companies, by virtue of their agreement with the commission men, are permitted to determine who shall buy the dead animals and the price which shall be paid therefor. This monopoly power has generally resulted in the establishment of only one dead rendering plant at each of the important yards.

Commission Men's Office Space:

The commission men and traders at the stockyards must have offices in or near the yards. They can get such accommodations only from renting or leasing from the stockyard companies. For the purpose of furnishing such office space each yard has a large building or series of buildings in which offices are leased to the commission men. The commission men are allotted pens, and inasmuch as it — of great advantage to commission men to be able to dispose of his customer's live stock at the earliest possible hour, location of pens most favorable to the prospective buyer is of great advantage.

Terminal Railways:

The centralization of the market at one site and the resultant growth of the packing houses in or about the market, of necessity, require terminal railways to facilitate the switching of cars from the railroads to the stockyards, from the yards to the packing plants, and from the packing plants to the railroads. These terminal or stockyard railways are usually owned by the stockyard companies or by those in control of the stockyard companies. Control of these railways carries with it the power to grant or withhold sidings, spurs, or other accommodations which may be required by the packing house, and those in control of said terminal railways are thereby in a position to discriminate [fol. 9] against other packers or independent buyers by practicing delay in loading the animals bought by said packers or independent buyers and in switching the loaded cars to the connecting lines.

Market Papers and Journals:

In addition to having a free market in which to dispose of his live stock, the cattle raiser requires full, accurate, and unbiased reports of the demand for live stock, the

prices prevailing, and the character and kind of stock required, together with such other information as to market or trade conditions. The cattle raiser, of necessity, is located at places remote from the market, he rarely accompanies his shipment to the market, and by reason of the cost of shipment and of feeding in transit and while being held for sale it is imperative that he dispose of his stock when once he has shipped. For his guidance the cattle raiser relies largely upon the trade papers and journals. Control of these papers and journals furnishes a means whereby the flow of stock to the market may be increased or decreased to the benefit of the slaughterer.

It is, therefore, evident that control of the stockyards and of the other facilities apertaining to the stockyards carries with it:

(a) A profit derived from the meat industry levied upon it and collected before the animal is slaughtered, all of which profit, however, evidences itself in the utlimate cost which the consuming public must pay for the dressed meat.

(b) A potential means of favoritism in dealing with commission men and of influence over them, a power to grant monopolies—carrying with it consequent profit—to banks, cattle-loan institutions, rendering plants, to concerns supplying food for live stock, and to others.

(c) A means to prevent the establishment of new packing plants and to hamper the growth of those in existence.

(d) A means to prevent the development and limit the number of new markets and to centralize and restrict business to the stockyards so controlled.

(e) Peculiar and exclusive access to information concerning the receipts and sale of live stock, its disposition, and the dissemination of information to the producer.

Branch Houses, Route Cars, Autotrucks, and Cold-Storage Warehouses

Branch Houses:

The primary means adopted by the parent companies in the distribution of their dressed meats are the branch houses. These houses are storage stations located in the cities and larger towns. They are equipped with facilities

for cooling and preserving the meats, and each is under the charge of a branch house manager, under whose direction the branch house sales organization sells to retail and wholesale butchers, to purveyors, hotels, restaurants, and other similar large consumers. The parent companies [fol. 10] maintain 1,120 branch houses in various large towns and cities throughout the United States, as against which all other interstate slaughterers, independent of the parent companies, maintain only 139.

Route Cars:

The route cars supplement the branch houses. They serve the purpose of reaching these small communities where the trade is not sufficiently large to justify investment in a branch house. These route cars travel over what are known as car routes. Orders are taken in advance and the route cars reaching specified towns on specified dates serve the requirements of the smaller communities. The starting point for the route cars is usually the packing plant, though in some instances the route car starts from a branch house. The parent companies operated as of June, 1918, 1,297 route cars, which constituted 90 per cent of the total number operated in the packing industry. Said route cars reach and serve dealers in 37,176 towns, and operate in 37 of the States of the United States.

Autotrucks:

This is a further development of the route-car plan. It had its origin in the development of the motor truck, and because of its freedom from railway limitations and schedules it is enabled to reach a wider radius and smaller towns than is the route car.

The autotrucks have been adopted primarily by Armour & Co. as a supplement to the car routes. These autotrucks reach and serve a total of 20,836 towns throughout the United States.

Cold-storage Warehouses:

The cold-storage warehouses were in the beginning adopted as an instrumentality for enabling the parent companies to extend the volume of their slaughter of live stock and sale of dressed meat. In the first instance they were

used for chilling meat in connection with the packing business. Then they were constructed in connection with the branch houses, so that they might be used for storing and holding the finished meats until they were sold. Later they were either built or acquired in the large eastern seaboard cities for long-time storage and for storing for export. As will be more fully set forth hereafter in discussing the control of substitute foods, these storage warehouses were later employed to store nonmeat-food products. Later control was acquired over public storage warehouses where surplus space was leased or let to others. Later it will be pointed out how control of this public-storage warehouse was employed to aid in control of the price of meats and substitute foods.

The Parent Companies' Acquisition of Above-described Facilities and Their Purpose in Doing So

The parent companies and their controlling heads, appreciating the advantages which were to be gained by [fol. 11] controlling the stockyards and the facilities pertaining thereto, the terminal railways and market papers and trade journals, and realizing that the requisition of such instrumentalities might thus enable them to obtain a primary profit not only out of the sale of live stock purchased and slaughtered by them but also on that purchased and slaughtered by their competitors, and realizing the opportunities thereby to repress and discourage the development of independent packers and slaughter houses and to control the shipments of meat to the various markets, set about the acquisition of the various stockyards and the appurtenances and privileges incidental thereto. This in many instances was done by a concert of action and pursuant to a common understanding. In most instances the acquisition of control of the aforesaid stockyards by any one or more of the parent companies was acquiesced in by the others and in all instances the ownership or control of stockyards by other packers or by any one in fact other than the parent companies or one of their members or their controlling heads, was discouraged and opposed.

In pursuance of a common purpose, plan, and design, outside investors and independent packers have gradually been forced out as dominating factors both in the ownership and management of most of the important stockyards

and have been replaced by the parent companies or their representatives. This acquisition has been accomplished by various methods: In the earlier years by exacting stock donations under threats of moving away their packing plants, later by cash subscriptions for stock, generally below par, and in other instances by voluntary reorganization of stockyard companies in order that the parent companies and their controlling heads might gain a controlling or dominating power in the yards and thus be induced to continue to maintain their packing plants thereat. By these various means the parent companies directly, or indirectly through their controlling heads, have been enabled to obtain control of substantially all of the large stockyards of the country. They now have, either jointly or separately, a controlling interest in 22 of the 50 market stockyards in the United States.

The parent companies have availed themselves of the control so acquired by them in the stockyards aforesaid to elect the officers and directors of said stockyards and to dominate and control the policies thereof. They have granted exclusive privileges, such as the right to purchase dead animals, the right to furnish supplies and facilities and the location of cattle banks and cattle loan companies, to concerns and corporations in which they or some of them or individuals who are stockholders in said parent companies, hold the controlling stock, and they have otherwise, acting in concert, employed the powers and privileges more specifically set forth and discussed under the heading "Nature of the business and method by which it is conducted"; all of which has been done with the intent and purpose of, and has had the effect of discouraging and suppressing the establishment of independent packing establishments and dwarfing the growth of such independent packing companies as might then be in existence, and to enable said parent companies, their subsidiaries or the [fol. 12] individuals who own and control the parent companies and their subsidiaries to obtain vast profits from the management of the stockyard and the granting of the privileges appurtenant thereto, which profits are realized not only upon the live stock purchased by the packers but upon that purchased by their competitors. These methods have thus enabled them to enjoy and realize such profits without the same appearing or being disclosed in the profits of the

parent companies; they have also furthered the attempt of said parent companies to monopolize the meat industry of the country and to artificially control the ultimate price which the consumer pays for meat and meat products.

Contracts in Restraint of Trade

The parent companies have entered into certain unlawful contracts and combinations to restrain trade and commerce and to artificially prevent between themselves competition in the prices for which meat and meat products are sold.

The most important of said contracts and agreements is what is known as the percentage purchase arrangement. This arrangement, though applied primarily in the purchase of live stock, had as its ultimate object the elimination of competition, not only in the purchase of live stock but also in the sale of dressed meats. It is a well-established commercial principle that a limitation upon the source of supply and the consequent limitation upon volume of business are the easiest means of removing all incentive to reduce prices.

The simplest way to limit the volume of dressed meat is to limit the purchase of live stock.

Recognizing these principles, the parent companies thereupon agreed upon and thereafter recognized between themselves certain percentages or proportions to which they deemed that each company was entitled, and they thereafter so gauged their purchases that annually their respective purchases approximated actually or substantially the percentages so agreed upon.

As a means of perfecting this arrangement, divers percentages varying at different stockyards were agreed upon, and understandings were had that certain of the parent companies should buy in certain yards or should refrain from buying in certain stockyards. In order to prevent such plans from being disarranged by outsiders agreements were made with such outsiders by which purchases between the parent companies and the independents were effected upon a percentage basis similar to the above.

Means were adopted and by virtue of the parent companies' control over many of the stockyards were easily executed by which sales to outsiders or independents were controlled by the parent companies.

Control over the stockyards, the stockyards loan institutions, the terminal railways, and other privileges and perquisites has discouraged any opposition by either commission men or independent packers.

[fol. 13] Control of Substitute Foods

Having eliminated competition in the meat products, the defendants next took cognizance of the competition which might be expected from what we here refer to as substitute foods. Their experience had taught them that if meat prices advanced out of proportion to that of other substitute foods, the consuming public manifested a tendency to turn to such substitutes. To prevent this the defendants set about controlling the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitute foods ordinarily handled by wholesale grocers or produce dealers. To accomplish this purpose the defendants availed themselves of the advantages afforded by the refrigerator cars, route cars, auto trucks, branch houses, and storage warehouses owned or controlled by them. These facilities intended primarily for the sale of meats were employed with comparatively no increase of overhead in the distribution of the substitute foods and unrelated commodities. The defendants were enabled thereby to reach remote spots. This advantage was also employed temporarily to fix prices so low as to gradually eliminate competition.

These attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually being invaded, and unless prevented by a decree of this court the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table.

Extent to Which the Monopolistic Attempts Have Been Successful

Financial Growth, Present Net Worth, and Volume of Business:

In the 15 years from 1904 to 1919, Swift & Co., Armour & Co., Wilson & Co. (Inc.), and the Cudahy Packing Co.,

according to their financial reports, grew from a net worth of approximately $92,000,000 to a net worth of approximately $479,000,000, and in this same period they paid in cash dividends $105,000,000. Only $89,000,000 of their increased worth represented new capital. Though always asserting a very low rate of profit on sales, the five parent companies have grown so rapidly that their combined net profits for 1917 have equaled nearly the amount of their total net worth in 1904. Sales in 15 years have increased until for the fiscal year 1918 they reached the vast sum of $3,200,000,000. This was realized from meats, substitute foods, and unrelated lines, as hereinabove set forth. In stating these figures account has been taken only of the profits and sales of the parent companies and subsidiaries included by them upon their books. No account has been [fol. 14] taken of the many corporations which are owned or controlled by the same family or financial interest as own or control the parent companies.

In addition to these profits there have been other vast profits, difficult of ascertainment, realized by the individuals by virtue of either their personal control of other packing houses and slaughtering companies or their interest in stockyards, terminal railways, rendering companies, cattle-loan institutions and banks, and other corporations, all of which corporations have their inception and depend for their prosperity upon advantages or privileges growing out of the interlocking control of the stockyard and stockyard appurtenances.

Number of Controlled Companies

The parent companies or the individual defendants and their families maintain and control 574 corporations or concerns, including 131 trade names. They have a significant minority stock interest in 95 others and an interest of unknown extent in an additional 93. Thus the total number of concerns in which they have control or interest is some 762. In the years that are past the parent companies have acquired or organized many other concerns and have maintained them so long as they were useful for their purposes. When no longer useful those concerns, so acquired or organized, have ben dissolved and their businesses have been

merged into that of the parent companies or that of other subsidiaries. Such dissolved corporations and concerns are omitted in the above compilation except in those instances where their names have been continued as trade names. The total of 762 above stated, therefore, falls far short of representing the number of concerns that corporate and individual defendants have acquired or have organized in furtherance of the general scheme and plan of action already explained.

Extent of Industrial Control in the Substitute Foods and Unrelated Commodities:

It would be an enormous undertaking to determine the degree of control exercised by the defendants in all of these various industries. Enough has been ascertained to indicate that the growth has been rapid and that if permitted to continue unchecked, in a matter of a few years the control will be complete.

In 1916 the business of Armour & Company in canned fish, vegetables and sundries, canned and dried fruits, fruit preserves (soda fountain supplies) and grape juice amounted to $6,396,036.73; in 1918, two years later, the same company's volume of business in these same items was $39,820,000, over a sixfold increase. While part of this increase of business may be attributed to the increase of population and the consequent increase of consumption, the greater part thereof was acquired at the expense of competitors. Of the corporations which have been acquired by the parent companies in recent years, a large number are concerns manufacturing or selling these substitute foods or unrelated commodities. This fact, together with the increased activities [fol. 15] of the parent organizations, themselves, in these lines indicates a well-defined purpose on their part to secure control of the market for meat-substitute foods. In addition to the companies whose control has been acquired by outright purchase, the parent companies have, in a large number of instances, contracted for the exclusive output of many other companies engaged in the production of the substitute foods and the unrelated commodities. The outputs of these plants are marketed by the parent companies or by their subsidiaries through the distribution facilities of the parent companies. In this fashion the parent companies control the output of these concerns and the market price of

their products as completely as though they themselves owned the producing companies.

Individual Defendants

The individual defendants are either officers, directors, agents, or employees of the parent companies or their subsidiaries or large stockholders of parent companies and subsidiaries who are otherwise affiliated in commercial operations with the active heads of the parent companies. These individual defendants are in their individual capacity financially interested to a great extent in the stockyards, terminal railways, cattle loan banks, rendering companies, and other institutions interrelated with the stockyards. They, or some of them, control the corporations dealing in the substitute foods and the unrelated commodities. In many instances, in addition to their individual holdings, they hold stock in these corporations for the benefit of the parent companies. The control by these individuals of the facilities or instrumentalities of the meat business and their interest in concerns dealing in the substitute foods and the unrelated commodities enable the parent companies to carry out the purpose of the combinations hereinabove described, and are now and will continue to be a sinister and ever-present means of furthering the attempt to monopolize and perfect it to such a degree that the parent companies or their subsidiaries will have complete control not only of meat products but of all substitute foods consumed in the United States.

Subsidiaries Defendants

These comprise many, but not all, of the subsidiaries owned or controlled by the parent companies. Only these subsidiaries, which are substantially 100 per cent parent-company owned and which are engaged either in the slaughtering, packing, or selling of meats, have been made parties defendants. It is the plan and scheme of this petition and the prayer for relief that the corporations which in themselves own the facilities more specifically described above or deal in the substitute foods and unrelated commodities shall not be made parties defendants in the first instance or until it appears that they are necessary parties defendants, but that the parent companies, the subsidiaries defendants, and

the individuals should be compelled to divest themselves of [fol. 16] all interest in or connection with the subsidiaries owning the facilities or dealing in the substitute foods or commodities referred to.

Prayer

Wherefore, petitioner prays:

I. That the defendants, and each of them, be forever enjoined from continuing any contract, combination, or conspiracy in restraint of trade or commerce in the purchase of live stock, or the purchase, sale, or distribution of dressed meats or other products or commodities now handled by them, or any of them, among the several States or foreign nations, which contract, combination, or conspiracy may now exist between them, or any two or more of them, or from doing any act pursuant to or in furtherance of any such contract, combination, or conspiracy, and that they be enjoined from entering into any other or further contract, combination, or conspiracy, either among themselves or among any two or more of them, or with any other person or persons whatsoever, in restraint of trade or commerce between the several States and foreign nations.

II. That they, and each of them, be enjoined and forever restrained from monopolizing, or attempting to monopolize, or conspiring to monopolize, the trade or commerce between the several States or with foreign States in the purchase, sale, or distribution of live stock or the commodities aforesaid.

III. That the defendants, and each of them, be required to divest themselves to such extent and upon such terms and conditions as the court may deem proper from such interest in or control over public cold-storage warehouse, retail meat markets, stockyards, terminal railways, market or trade journals, or such other facilities as are connected with or are appurtenances to the stockyards, in such instances as the court may deem that such instrumentalties constitute a means of facilitating the formation or continuance of monopolies in the purchase of live stock or the sale of the commodities aforesaid.

IV. That the corporation defendants, and each of them, be perpetually enjoined from permitting their refrigerator cars, route cars, auto trucks, or branch houses, or other distributive facilities, to be used for the distribution or sale of commodities of the character and kind hereinbefore generally described as substitute foods and unrelated commodities in such instances and to such extent as the court may deem necessary for the purpose of preventing the aforesaid defendants from acquiring a monopolistic control over the trade or commerce in such commodities, or a control which may enable them to restrain the trade or commerce or artificially affect the price of any commodities in which the aforesaid defendants now deal.

V. That the defendants and each of them be required to divest themselves of all stockholdings or other interest in any corporation, partnership, or association now dealing in any of the food substitutes or unrelated commodities hereinbefore more specifically described, and that wherever [fol. 17] said defendants own, operate, or control a department buying, selling, or otherwise distributing substitute foods, unrelated commodities, or any of them, that they be required to discontinue the aforesaid department, and that the defendants and each of them be restrained and perpetually enjoined from hereafter acquiring any stockholdings or interests of the character hereinbefore described, in any corporation dealing exclusively or partially in the said substitute foods or commodities hereinbefore referred to, or from themselves engaging in such business, either directly or through a department.

VI. That the defendants and each and every one of them be perpetually enjoined from indulging in any unlawful practice or committing any act of unfair competition or any other act with the purpose of or which may have the effect of unduly restraining trade and commerce, or which may be indulged in or done with the purpose or effect of monopolizing said trade or commerce in the commodities now manufactured, bought, sold, or otherwise dealt in by the defendants or any one of them.

VII. That your petitioner be granted such other and further relief as the nature of the case may require and the court may deem just and proper in the premises.

To the end, therefore, that the United States may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant writs of subpœna directed to each and every one of said defendants, commanding them and each of them to appear herein and answer, but not under oath (answers under oath being hereby expressly waived), the allegations contained in the foregoing petition, and to abide by and perform such order or decree as the court may make in the premises, and upon final hearing hereof to permanently enjoin each of the defendants as hereinbefore prayed.

Respectfully submitted.

John E. Laskey, United States Attorney. A. Mitchell Palmer, Attorney General. Isidor J. Kresel, John H. Atwood, Joseph Sapinsky, Special Assistants to the Attorney General.

[fol. 18] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF SWIFT & COMPANY AND OTHERS—Filed February 27, 1920

The Joint and Several Answer of the Following-named Defendants to the Bill of Complaint Filed Herein

Corporations	Organized under laws of—
Swift & Company	Illinois.
Swift & Company	West Virginia.
Swift & Company (Inc.)	Kentucky.
Swift & Company (Ltd.)	Louisiana.
Swift & Company	Maine.
Swift Beef Company	Maine.
United Dressed Beef Co. of New York	New York.
J. J. Harrington & Company (Inc.)	New York.
Bimbler Company	New Jersey.
The G. H. Hammond Company	Michigan.
Omaha Packing Company	Kentucky.
Plankinton Packing Company	Wisconsin.
Sturtevant & Haley Beef & Supply Company	Massachusetts.

Corporations	Organized under laws of—
E. K. Pond Packing Company	Illinois.
Van Wagenen & Shickhaus Company	New Jersey.
Hammond Beef Company	Michigan.
Omaha Meat Company	California.
A. Canfield Commission Company	New Jersey.
H. C. Derby Company	New York.
Metropolitan Hotel Supply Company	Maine.
Vermont Supply Company	Massachusetts.
The Hotchkiss Beef Co.	New York.
Western Packing Company	Colorado.

Individuals

Louis F. Swift.	Laurence A. Carton.
Edward F. Swift.	Frank S. Hayward.
Charles H. Swift.	Charles A. Peacock.
Gustavus F. Swift, Jr.	Wilfred W. Sherman.
Harold H. Swift.	Wellington Leavitt.
Alden B. Swift.	John M. Chaplin.
George H. Swift.	William B. Traynor.

[fol. 19] These defendants now and at all times hereafter saving unto themselves all and all manner of benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties, imperfections, and insufficiencies in the complainants' said bill of complaint contained, for answer thereto or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

"Court's Jurisdiction"

These defendants admit that Swift & Company referred to in said bill of complaint as a parent company, either directly or through subsidiaries is engaged in—

(a) The purchase and slaughter of live stock.

(b) The preparation and manufacture of dressed meat and by-products of the slaughtered live stock.

(c) The curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animals.

(d) The production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used.

(e) The manufacture, canning or otherwise preparing for the market, sale and distribution of certain food supplies other than meats.

(f) The manufacture and sale of various other articles commonly purchased and used either by the producer of live stock, the companies transporting the live stock or dressed meats or the competitors of the parent companies.

But these defendants allege that the business and transactions in which said Swift & Company is alleged in the bill of complaint to be engaged are not interstate or foreign commerce, and no facts are alleged in the bill of complaint which constitute interstate or foreign commerce.

These defendants deny that the various other articles described in said subdivision "(f)" as manufactured and sold by said Swift & Company, either directly or through subsidiaries, are articles or commodities unrelated to the business of said Swift & Company as is impliedly charged in the bill of complaint.

These defendants deny that they or any of them have made any contract or in any manner or by any act, method, or means have engaged in or are or have been a party to any combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations.

These defendants deny that they or any of them in any manner or by any act, method, or means have monopolized or attempted to monopolize, or have combined or conspired with any other person, persons, firm, or corporation to monopolize any part of the trade or commerce among the several States or with foreign nations.

These defendants deny that Swift & Company, one of the "parent companies," referred to in the bill of complaint, and its subsidiaries together with the other so-called [fol. 20] "parent companies" and their subsidiaries, or otherwise, acting by and through their principal officers or otherwise, have attempted to dominate, control, and monopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly

and control over divers and sundry products and commodities, referred to in the bill of complaint, as charged therein.

These defendants deny that said Swift & Company and its subsidiaries, together with the other so-called "parent companies" and their subsidiaries, or otherwise, are attempting to increase and extend said alleged monopoly of the products and commodities referred to in the bill of complaint, as charged therein; and these defendants deny that the said parent companies and their subsidiaries artificially control the supply and price of the food supplies of the Nation, as charged in the bill of complaint.

"Object to be Attained".

These defendants deny that they or any of them have created or obtained any monopoly in the interstate trade or commerce of live stock, meat products, and substitute foods, as charged in the bill of complaint; and these defendants deny that any monopoly by the defendants named in the bill of complaint exists, as is charged in the bill of complaint. These defendants deny that there has been or is in existence, as charged in the bill of complaint, any contract, combination, or conspiracy in restraint of trade or commerce among the several States.

On the contrary, these defendants allege that said Swift & Company and its subsidiaries, and as they are informed and believe, and therefore allege, that each parent company and its subsidiaries described in said bill of complaint are in actual and keen competition with each and every other parent company and its subsidiaries, so that the extent to which these defendants may dominate, control, or monopolize the food supply of the Nation depends upon the volume of business done by said Swift & Company and its subsidiaries compared to the total volume of business done by all engaged in supplying the food supply of the Nation.

These defendants allege that said Swift & Company and its subsidiaries handle only approximately 12 per cent of the total meat supply of the country and only approximately 22 per cent of the output of meats and meat products of the numerous plants engaged in the meat-packing business which ship meat in interstate commerce, and allege that said Swift & Company and its subsidiaries likewise handle only approximately 6 per cent of the total quantity

of butter, eggs, and poultry which enters trade channels in the United States; and only approximately 15 per cent of all cheese sold in the United States; and only approximately 20 per cent of the total production of oleomargarine in the United States; and less than 15 per cent of the total quantity of lard substitutes sold in the United States; and less than 5 per cent of the total quantity of canned fruits and canned vegetables sold in the United States; and less than 15 per cent of the output of hides in the United States; [fol. 21] and these defendants allege that the volume of business thus handled by said Swift & Company and its subsidiaries is too small a part of the total volume of business in said respective lines of business to even suggest the possibility that Swift & Company could dominate, control, or monopolize any or all of such lines of business, or could control or manipulate the prices charged and received by it in the sale of commodities in said business.

These defendants allege that even if the five parent companies mentioned in the bill of complaint and their respective subsidiaries acted in agreement or combination (which these defendants deny), the business of said five parent companies and their subsidiaries would not and could not dominate, control, or monopolize the food supplies of the Nation, but, on the contrary, would be less than 40 per cent of the meat supply of the United States; and less than 15 to 20 per cent of the quantity of butter, eggs, and poultry which enters trade channels in the United States; and only about 3 per cent of the total sale of grocery products at wholesale in the United States; and not more than 45 per cent of the output of hides in the United States; and not more than 16 to 17 per cent of the cattle, calf, and sheep leather output of the United States.

These defendants allege that even if the five parent companies in said bill described acted together by agreement or combination (which these defendants deny), said companies so acting together would not and could not dominate, control, and monopolize said respective businesses or the food supplies of the Nation, nor could said five parent companies control or manipulate the prices of commodities sold by them respectively; and therefore these defendants allege that it is obvious that there is and can be no danger whatsoever that "within the compass of a few years" the packers will "control the quantity and price of each article of food

found on the American table," as charged in the bill of complaint.

These defendants allege that if any one or all of said defendants, dominated, controlled, or monopolized a very great proportion of the food supplies of the Nation, such domination, control, or monopoly would necessarily appear in the profits made by such defendant or defendants upon the sale of their products. These defendants deny that such domination, control, or monopoly exists, and allege that said Swift & Co. is not a party to any such domination, control, or monopoly, and alleges that the profit of said Swift & Co. from all sources for the fiscal year 1919 was only 1 1/6 cents on each dollar of sales and averaged only approximately one-fourth of 1 cent on each pound of all products of every description sold, and that such profit is so small as to have practically no effect on prices charged by Swift & Co. and its subsidiaries for their products; and, further, that said 1 1/6 cents on each dollar of sales includes the profits received by said Swift & Co. and by all its subsidiaries upon all products sold by them, including meat products and by-products of every description. These defendants allege that neither these defendants nor any of them would be satisfied with such a nominal profit upon their business if they had the power through domination, control, or monopolization of trade to obtain a reasonable profit upon the sale of their products.

[fol. 22] "The Nature of the Business and Method by Which It is Conducted"

These defendants admit that the principal business of said Swift & Company, directly or through its subsidiaries, is the slaughter of live stock, the dressing of the carcasses thereof, and the sale of the dressed meat and of the by-products resulting from the slaughter of live stock; but these defendants deny that said business as described in the bill of complaint is interstate commerce.

These defendants admit that the invention of the refrigerator car made it possible to slaughter live stock and prepare the fresh meat thereof for market at or near the great sources of supply in the West and to preserve the meat in transit to the consuming public in the East, and these defendants allege that great losses from shrinkage in

weight of, injury to, and death of the live stock in transit were thereby saved, which losses had theretofore been an incident in the shipment of the live animals; and further allege that the invention of the refrigerator car, by preventing such losses and by preventing other losses, such as bruises to the hides of animals shipped long distances, which materially reduce the value of such hides when cured, revolutionized the live-stock and fresh meat business of the country, developed the live-stock industry, and cheapened the cost of meats and animal by-products to the consumer and was, therefore, of incalculable benefit to the public.

These defendants deny that they have any exclusive right to or monopoly over refrigerator cars; which fact may be inferred from the allegations in the bill of complaint. These defendants allege that any and all who desire to do so may secure, own, and furnish such refrigerator cars to the railroads for the purpose of carrying their products under the same terms, conditions, regulations, and tariffs of the railroads that the railroads require of these defendants.

"The Stockyards"

These defendants admit that stockyards are public market places, to which all who wish may have free access and right to trade. These defendants allege that the stockyard companies do not buy or sell live stock at the stockyards or interfere with or affect in any way the trading between the live-stock raisers or their agents, on the one hand, and the buyers on the other.

These defendants allege that the defendant corporations or some of them, by purchasing live stock shipped to the stockyards adjacent to their respective packing plants, have afforded and do afford the opportunity to the cattle raiser to dispose of his live stock for an immediate cash price at any and all times, in times of glut as well as in times of scarcity, and said defendants have by this means established and developed such stockyards and encouraged the growing of live stock.

These defendants allege that they have likewise improved and made attractive to live-stock raisers the stockyards in which they have been interested, by promptly furnishing at [fol. 23] great expense all facilities and conveniences neces-

sary or suitable to the receiving, caring for, and handling of live stock, and have thus developed and encouraged the growing of live stock.

"Conveniences and Facilities Controlled by Stockyards"

"Packing-house Sites:"

These defendants admit that as to all stockyards in which they are interested the stockyard companies generally own all the available land within the yards. These defendants deny that at any stockyards in which they are interested all the land surrounding the yards is owned by companies controlled by the stockyard company or its principal stockholders. These defendants allege that in many instances stockyard companies or companies controlled by the stockyard company or its principal stockholders have bought some land adjacent to the yards for the purpose of providing for the growth of the yards and for the establishment of additional packing plants at said yards whenever such opportunity offered. These defendants deny that new packing companies, as a rule, can secure desirable packing sites only from the stockyard companies or from the companies owned or controlled by said stockyard companies or their principal stockholders; and these defendants deny that stockyard companies, as a rule, are in a position to determine what packing companies and how many plants shall be established at the various stockyards as charged in the bill of complaint.

These defendants allege that it is necessary, in order to develop a market at stockyards and to encourage the owners of live stock to ship their live stock to the stockyards, that there be a number of packing companies or other purchasers ready to buy live stock presented for sale at said stockyards and ready to buy said live stock at all times, so that there will always be a steady competitive and attractive market to which live-stock producers may ship their live stock with the assurance that they will find a fair and prompt market therefor. These defendants allege that for said reasons it is to the interest of the stockyard company and its stockholders to establish new packing plants at or adjacent to the stockyards, and these defendants, therefore, allege that it is good business foresight to

acquire in advance at least some available land at or adjacent to the stockyards.

"Sites for Stockyard Banks and Cattle-loan Companies:"

These defendants allege that banks and cattle-loan companies are established for the purpose of supplying to live-stock producers funds which before the development of such specialized institutions as cattle-loan companies have not been easily available, and therefore it is to their interest and that of the stockyard companies to facilitate the establishment of such institutions at or adjacent to the stockyards.

These defendants admit that a stockyard company has the power to designate how many and which banks or cattle-[fol. 24] loan companies may establish themselves within the yards which the stockyard company owns, but these defendants deny that any stockyard company in which they or any of them are interested, or these defendants or any of them have ever exercised such power arbitrarily or to the detriment of the interests of the live-stock raiser or have ever exercised such power at all. These defendants take pride in pointing out the part they respectively have played in financing the live-stock industry through the encouragement of such live-stock banks and cattle-loan companies.

"Rendering Plants:"

These defendants admit that the stockyard companies generally find it necessary to determine who shall purchase carcasses of animals which have died from disease or accident while in transit or after reaching the stockyards, but these defendants allege that the number of animals dying from disease or accident while in transit or after reaching the stockyards is generally not sufficiently large to attract capital or justify the existence of more than one company to handle such dead animals and generally no one company would undertake to perform the service or would invest the capital necessary to equip itself to perform the service of removing dead animals from the premises of the stockyards company if it were not assured of a sufficient volume of such business to justify such undertaking.

These defendants allege that the maintenance of a sanitary condition at the stockyards requires the prompt removal of such dead animals, and experience has shown that in order that such service may be rendered promptly and efficiently it is generally necessary to regulate such business and enter into an arrangement with any company seeking to perform such service, under which such company will agree to be ready at all times to perform such service promptly and efficiently. These defendants deny that the prices which have been fixed for such dead animals at stockyards where they or any of them have been interested are or have been arbitrary, unreasonable, or unjust.

"Commission Men's Office Space:"

These defendants allege that no one office can be leased and no one pen can be allotted to more than one commission man at a time; that necessarily some offices and some pens are more advantageously located than others; but these defendants deny the implied charge contained in the bill of complaint that there is discrimination on the part of any stockyard company in which they or any of them are interested in leasing office space and other accommodations and in allotting pens to commission men and traders at the stockyards.

"Terminal Railways:"

These defendants allege that the terminal railways, to facilitate the switching of cars from trunk-line carriers to the stockyards, from the stockyards to the packing plants, [fol. 25] and from the packing plants to the trunk-line carriers, are common-carrier railroads engaged in intrastate and interstate commerce, and that they are subject to the railroad commissions of the several States in which such railroads may be located and to the Interstate Commerce Commission of the United States; that under the laws of the several States and under the interstate commerce act of the United States it is illegal for such common-carrier railroads to discriminate between shippers in the location of sidings, spurs, or other accommodations, and severe penalties are prescribed under the several statutes aforesaid for such discriminations.

These defendants deny that there is or has been any discrimination against any packer or buyer by any stockyard terminal railway operating at any stockyards, described in the bill of complaint, in which they or any of them are interested; these defendants deny that any such terminal or stockyard railway has practiced any discrimination in granting or withholding sidings, spurs, or other accommodations required by any packing house, or by delay in loading animals brought at stockyards served by said railways, or in switching; and these defendants allege that in the operation of the stockyards and terminal railways described in the bill of complaint, in which they or any of them are interested, service is given to all alike without favoritism toward any shipper, dealer, packer, or buyer.

"Market Papers and Journals:"

These defendants deny that the control of trade papers and journals has been used by them or any of them as a means whereby the flow of stock to the market may be increased or decreased to the benefit of the slaughterer, and these defendants allege that the only object of these defendants, or any of them, in owning or controlling trade or market journals has been to furnish adequate market information, including accurate price statistics and quotations, which were not otherwise available.

These defendants further allege that the establishment of such trade or market journals has been an important factor in affording better and more accurate information to live-stock producers and shippers as to the conditions of the respective markets to which they desired to ship their live stock.

These defendants deny the inferential charge contained in the bill of complaint that it is unlawful or improper for the parent companies mentioned in the bill of complaint or any of them to own, operate, or control the stockyards and facilities appertaining to stockyards or to derive a profit from such ownership, operation, or control of such stockyards.

These defendants allege that the operation of stockyards costs large sums of money and requires the investment of large capital, whether such stockyards are owned by these

defendants or by others, and the investors in such facilities must derive a profit if they are to continue to keep their capital invested therein. These defendants further allege that the profits derived by these defendants or any of them [fol. 26] from the operation of such facilities are only a reasonable return upon the investment and the capital employed and for the services performed; and these defendants deny that the charges made by the respective stockyards companies in which they or any of them are interested, for their respective services, would be lower were the stockyards operated by others than by these defendants. These defendants allege that the expense and the reasonable profits of operating such stockyards must enter into the final prices charged for meats, without reference to what interests own or operate such yards.

Said Swift & Company alleges that it is to its interest and it desires to have well-equipped and efficiently operated stockyards in connection with and adjacent to its packing plants, so as to attract adequate supplies of live stock for slaughter in such packing plants.

These defendants deny that control of stockyards and facilities appertaining to stockyards is used by these defendants or any of them as a means of favoritism in dealing with commission men. They deny that such control of stockyards and other facilities appertaining thereto has resulted in any discrimination by these defendants in favor of banks, cattle loan institutions, rendering plants, and concerns supplying food for live stock, which are located at or near to any of the stockyards described in the bill of complaint.

These defendants deny that control of stockyards and facilities appertaining thereto has been used by these defendants, or any of them, as a means to prevent the establishment of new packing plants or to hamper the growth of those in existence.

These defendants deny that control of stockyards and facilities appertaining thereto is or has been used by the defendants as a means to prevent the development and limit the number of new markets or to centralize and restrict business to the stockyards so controlled. These defendants deny that the control of stockyards and facilities appertaining thereto affords peculiar and exclusive access by these defendants to information concerning the receipts and sale

of livestock, its disposition, and the dissemination of information to the producer.

"Branch Houses, Route Cars, Auto Trucks, and Cold Storage Warehouses

"Branch Houses:"

These defendants deny that the branch houses operated by the said Swift & Co. are merely storage stations, but these defendants allege that such branch houses are established and operated for the purpose of facilitating the sale and distribution of products produced and sold by said Swift & Co. and its subsidiaries.

These defendants allege that Swift & Co. and its subsidiary companies own or operate approximately only 400 branch houses in the United States and that said branch houses are operated in actual and keen competition with all of the branch houses operated by the other parent companies and their subsidiaries described in the bill of complaint. These defendants further allege that the number [fol. 27] of branch houses operated by the larger packers who are engaged in shipping commodities from one State to another is greatly in excess of the number operated by small packers doing a local business and not engaged in shipping their commodities from State to State and who, therefore, do not require branch houses in distant cities. These defendants further allege that a widespread selling organization is absolutely essential to the larger packer for the efficient marketing in the consuming markets of the East of the live-stock products which are produced in the West.

"Route Cars" and "Auto Trucks:"

These defendants allege that there is no significance in the fact that the five large packers operate 90 per cent of the car routes operated by the whole packing industry in the United States, for the reason that, and these defendants allege that, said car routes of the respective parent companies are operated in competition with each other and, further, that small packers doing a local business have no occasion and ordinarily do not undertake the distribution of their products by route cars to small towns at a distance from their packing plants.

"Cold-storage Warehouses:"

These defendants allege that the cold-storage warehouses described in the bill of complaint are necessary adjuncts and facilities for the preparation, conservation, and distribution of the food products stored therein. One of the purposes in operating such storage warehouses is to conserve the surplus supplies of seasons of heavy production for use during seasons of light production, thereby furnishing a more uniform market for producers and supplying such products at lower prices to consumers during times of natural scarcity.

Said defendant, Swift & Co., alleges that it has provided only sufficient cold-storage warehouses and space for its own business and that of its subsidiaries. These defendants deny that such cold-storage warehouses or space has been operated or is operated in collusion, combination, or agreement with others of said parent companies or their subsidiaries, and these defendants deny that they have employed or that they do employ or that they can employ such cold-storage facilities in aid of the control of the price of meats or substitute foods.

"The Parent Companies' Acquisition of Above-described Facilities and Their Purposes in so Doing"

These defendants deny that the parent companies and their controlling heads, by a concert of action or pursuant to a common understanding, or otherwise, set about the acquisition of the various stockyards and the facilities appurtenant thereto, the terminal railways and market papers and trade journals, for the purpose (implied in the bill of complaint) of obtaining a primary profit, not only out of the sale of live stock purchased and slaughtered by them, [fol. 28] but also on that purchased and slaughtered by their competitors, or for the purpose (likewise implied in the bill of complaint) of repressing and discouraging development of so-called "independent packers and slaughter houses," or for the purpose of controlling the shipment of meat to the various markets.

These defendants are informed and believe, and therefore allege, that the following phrases, "independent packers and slaughter houses," "independents," "outside investors" or "outsiders," as used in the bill of complaint, mean

and are intended to mean persons, firms, or corporations engaged in the meat-packing or other business other than the defendants in the bill of complaint, and that such phrases imply and were intended to imply, without expressly charging, that the defendants in the bill of complaint are not acting independently of and in actual competition with each other.

These defe-dants allege that they, or some of them, have invested their capital in, have acquired the ownership of, and have operated stockyards for the purpose of securing an adequate and satisfactory supply of live stock for the operation of their packing plants adjacent to such stockyards.

These defendants deny that in any instance the ownership or control by other packers, or by anyone in fact other than the parent companies or one of them or their controlling heads of any stockyards in which these defendants or any of them are interested, has been discouraged or opposed.

These defendants deny that in pursuance of a common purpose, plan, and design, or otherwise, so-called "outside investors and independent packers" have gradually been forced out as dominant factors in the ownership and management of most of the important stockyards in which these defendants or any of them are interested, as charged in the bill of complaint.

These defendants further deny the inference in the bill of complaint that the means whereby these defendants or any of them secured an interest in any of the stockyards described in the bill of complaint were illegal, reprehensible, or contrary to good morals, but on the contrary these defendants allege that the acquisition of such interests or of capital stock in said several stockyards, whether by way of purchase or gift, was lawful and proper.

These defendants deny that said Swift & Company has availed itself of any control which may have been acquired by it in the stockyards companies mentioned in the bill of complaint, to grant exclusive privileges, such as the right to purchase dead animals, the right to furnish supplies and facilities, and the location of cattle banks and cattle loan companies, to concerns and corporations in which the parent companies or some of them, or individuals who

were stockholders in said parent companies, held the controlling stock.

These defendants deny that said Swift & Company, acting in concert or otherwise, with any or all other of the "parent companies" described in the bill of complaint, has employed any power or privilege, as alleged in the bill of complaint, with the intent, purpose, or effect of discouraging, suppressing the establishment of, or dwarfing the [fol. 29] growth of, so-called "independent packing companies" as might then be in existence, as charged in the bill of complaint.

These defendants deny that they or any of them have employed any power or privilege described in the bill of complaint to enable said "parent companies," their subsidiaries, or the individuals who, as alleged in the bill of complaint, own and control the "parent companies" and their subsidiaries to obtain vast profits from the management of the stockyards or the grant of privileges appurtenant thereto.

On the contrary, these defendants allege that any profits realized by them, or any of them, out of the ownership or operation of said stockyards, or any of them, have amounted to only a reasonable return upon their investment in said stockyards and a reasonable compensation for the services rendered by and the facilities furnished at said stockyards.

These defendants deny that any profit received by said Swift & Company, or its subsidiaries, from any source whatsoever have been enjoyed or realized by said companies, or any of them, without the same appearing or being disclosed in the profits of the "parent company." On the contrary, these defendants allege that the profits of said Swift & Company from each and every source are truthfully reflected in its balance sheets and financial statements, and such profits are annually audited and such balance sheets and statements are certified to be correct by independent and responsible certified accountants and are widely published and circulated.

These defendants deny that said Swift & Company, in combination, collusion, agreement, understanding, or otherwise, with any other "parent company" described in the bill of complaint, or with their subsidiaries, has in any manner attempted to monopolize the meat industry of the

country, or artificially, or otherwise, to control the ultimate price which the consumer pays for meat and meat products, as charged in the bill of complaint.

"Contracts in Restraint of Trade:"

These defendants deny that said Swift & Company, in combination, collusion, agreement, understanding, or otherwise, with any other "parent company" described in the bill of complaint, has entered into any unlawful contract or combination to restrain trade and commerce, or to artificially, or otherwise, prevent between themselves, competition in the prices for which meat and meat products are sold.

These defendants deny that they or any of them have entered into any contract, combination, agreement, understanding, arrangement, or practice, whether known as "the percentage purchase arrangement," as charged in the bill of complaint, or otherwise, which had as its ultimate object the elimination of competition not only in the purchase of live stock, but also in the sale of dressed meats; and these defendants deny that the "parent companies" agreed upon and recognized between themselves certain percentages or proportions to which they deemed that each company was [fol. 30] entitled; and these defendants further deny that said Swift & Company so gauged its purchases that annually its purchases approximated actually or substantially the percentage so alleged to have been agreed upon. These defendants further deny that the purchases of live stock by Swift & Company or by its subsidiaries has been made in accordance with or pursuant to any agreement, understanding, or arrangement in regard thereto.

These defendants deny that divers percentages covering purchases by the "parent companies" of live stock at the various stockyards were agreed upon; and these defendants deny that Swift & Company or its subsidiaries has been a party to any understandings, agreements, or arrangements whereby certain of the "parent companies" should buy at certain yards or should refrain from buying at certain yards, as charged in the bill of complaint.

These defendants deny that any arrangements, agreements, or understandings were entered into with any so-called "outsiders" whereby purchases between the "parent companies" and such "outsiders" (also designated in the

bill of complaint as "independents") were effected upon a percentage basis, as charged in the bill of complaint. On the contrary, these defendants allege that they are in actual and keen competition with all others engaged in the purchase of live stock and the slaughter and sale of meats, including the other "parent companies" and their respective subsidiaries described in the bill of complaint.

These defendants allege that Swift & Company is constantly striving to increase its purchases of live stock, and they allege that Swift & Company did increase its purchases of cattle nearly 3½ per cent in the four years ending with 1917.

These defendants allege that the "parent companies" and many other packing companies, which are not defendants in the bill of complaint, have long established packing business and have been engaged for a great many years in the purchase of live stock at the respective stockyards in which the purchase of live stock is carried on in open markets and in which each purchaser can see from day to day just what number and kind of live stock his competitors are purchasing, and all of said packing companies, large and small, are likewise severally striving to increase their respective purchases of live stock.

These defendants alleged that such constant effort on the part of all packing companies to increase their respective volume of business tends to bid up the price for live stock to a point where the packing company can no longer afford to buy, for the reason that and these defendants allege that, the packing company, whether large or small, cannot afford to pay more for live stock than it can get from the consumer for the meat and the by-products of the live stock.

These defendants allege that such persistent, watchful and keen competition prevents said Swift & Co. from increasing its proportion of the total live stock purchases materially during any one year, but these defendants deny that such fact is evidence of or tends to prove any contract, agreement or understanding between the "parent companies" for any apportionment of live stock purchases [fol. 31] among them, but on the contrary these defendants allege that such fact results from an economic law which is applicable to every established industry where competition exists, and is peculiarly true of the packing business for the reason that the well known small profit of packing com-

panies on the sales of their products (heretofore in this answer referred to) fixes a narrow range within which any packing company can afford to bid up the price of live stock in order to increase its proportion of the total purchases of live stock.

These defendants alleged that by far the largest proportion of live stock for meat purposes is produced in the Western States and particularly in the States lying west of Chicago and that by far the largest proportion of the fresh meat and by-products resulting from the slaughter of such live stock is consumed in the Eastern States and particularly in the New England and North Atlantic States; that as a result of the invention of the refrigerator car, it is more economical to slaughter live stock in the West near the sources of supply and ship the fresh meat and by-products to the numerous consuming centers in the East than to ship the live stock from the West to such consuming centers in the East for slaughter.

These defendants alleged that approximately 90 per cent of the meat derived from live stock slaughtered in the West is not sold or consumed at the place of slaughter, but is shipped long distances, the largest part thereof being shipped to cities and towns in the East at which such fresh meat must be sold promptly for the best price there obtainable, for the reason that fresh meat is a highly perishable commodity and each succeeding day it is held it will bring a constantly lower price.

These defendants allege that no agreement or other arrangement concerning the purchase of live stock can have any effect upon prices which the fresh meat will sell for at the consuming centers, but that the price which can be obtained for the fresh meat is dependent upon the supply of meat and the demand for meat at the city or town where the meat is offered for sale.

These defendants allege that, even if the defendants should enter into an agreement or other arrangement affecting the aggregate number of live stock purchased, as charged in the bill of complaint, such agreement or arrangement could not change the then existing supply of fresh meat or affect the then demand for that supply of fresh meat at the local market in the East; and that if the local market in the East be glutted with fresh meat, prices will fall without reference to the quantity of live stock at that

time being purchased in the West or the price paid therefor; and likewise if the local market in the East has less fresh meat upon it than there is demand for, prices for that limited supply of fresh meat in that market will rise without reference to purchases and prices of live stock in the West; and that no agreement or other arrangement can affect prices of fresh meats at the local selling points that does not operate upon the supply of meat or the demand for meat at that particular point.

These defendants deny that they or any of them are directly or indirectly a party to any such agreement, com- [fol. 32] bination, or arrangement to directly or indirectly affect the supply or demand for meats; but they allege that the prices at which they buy live stock and sell fresh meats and all other commodities sold by them are determined solely by the economic law of supply and demand.

These defendants deny that means were adopted by them or any of them, whereby and by virtue of the "parent companies" alleged control over many stockyards, as charged in the bill of complaint, sales to so-called "outsiders" or "independents" were controlled by the "parent companies"; and these defendants deny that such control as the "parent companies" have exercised over stockyards, stockyards' loan institutions, terminal railways and other privileges and perquisites to the operation of such stockyards has discouraged opposition or competition by commission men or such so-called "independent packers," as charged in the bill of complaint.

"Control of Substitute Foods"

These defendants deny that they or any of them have eliminated competition in meat products, as charged in the bill of complaint. These defendants further deny that they or any of them set about to control the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other foods ordinarily handled by wholesale grocers or produce dealers, as charged in the bill of complaint. On the contrary, these defendants allege that Swift & Company and its subsidiary companies entered upon the business of handling fish, vegetables, either fresh or canned, fruits, milk, poultry, butter, eggs, and cheese for the purpose of utilizing their distribu-

tive sales agencies economically, as they had a lawful right to do.

These defendants allege that the handling of such products through its branch houses enabled Swift & Company and its subsidiary companies to dispose of a larger volume of products without a proportionate increase in expense; and has been in the interest and for the benefit of the consuming public, in that it has enabled the consuming public to receive said perishable products in a better condition for consumption than would have otherwise been the case. These defendants allege that the handling of said products has made it possible for Swift & Company and its subsidiary companies to establish branch houses and car routes at points which would not support a branch house or a car route handling only meat products, thus reaching a territory and serving a consuming public theretofore without a satisfactory means of supplying its wants in said perishable products; and, likewise, furnishing a broader outlet for the farmers' products by reaching a broader consuming public.

These defendants allege that there is, and can be nothing illegal or reprehensible in the defendants reaching "remote spots" as insinuated in the bill of complaint. On the contrary, these defendants allege that such reaching of "remote spots" is lawful and in the public interest. These defendants allege that they had and have a legal right to handle said products and are economically justified in so doing.

[fol. 33] These defendants deny that Swift & Company or its subsidiaries ever employed their distributive facilities or otherwise to fix prices so low as to eliminate competition.

These defendants deny that they or any of them have attempted to monopolize commerce in any of the food products above mentioned and they deny that any act or acts of these defendants have resulted in the defendants obtaining complete control of any food products, as charged in the bill of complaint. On the contrary, these defendants allege that Swift & Company and its subsidiaries handle an amount of so-called "substitute foods" which is negligible in comparison with the Nation's supplies of such "foods."

These defendants deny that unless prevented by a decree of this court, the defendants will, "within the compass of a few years, control the quantity and price of each article of

food found on the American table," as charged in the bill of complaint.

"Extent to Which the Monopolistic Attempts Have Been Successful"

"Financial Growth, Present Net Worth, and Volume of Business:

These defendants allege that they have no knowledge in regard to the financial figures of "parent companies" other than Swift & Company, and therefore these defendants neither admit nor deny the averments contained in the bill of complaint in regard to the aggregate financial growth of the "parent companies," or in regard to the payment of cash dividends by said companies. These defendants deny that it is illegal, reprehensible, or contrary to good business morals, as impliedly charged in the bill of complaint, to reinvest earnings of the defendant corporations in their business. These defendants allege that the profits made by Swift & Company and its subsidiary companies have been reasonable and have been the lowest possible consistent with a reasonable return upon the investment in the business, and have been so low as to practically not affect the prices at which its products are, or have been, sold to the consuming public.

These defendants deny that vast profits, whether difficult of ascertainment or otherwise, have been realized by the individual defendants by virtue of either their alleged personal control of other packing houses and slaughtering companies than the "parent companies" and their subsidiaries, or their interest in stockyards, terminal railways, rendering companies, cattle-loan institutions, and other corporations, as charged in the bill of complaint. And these defendants deny that such corporations had their inceptions in, or depend for their prosperity upon advantages or privileges growing out of interlocking control of stockyards and stockyard companies.

"Number of Controlled Companies":

These defendants have no knowledge of the number of corporations, trade names, or concerns in which other "parent companies" than Swift & Company or their respec-

tive subsidiaries have an interest, and therefore they [fol. 34] neither admit nor deny the averments contained in the bill of complaint in regard to the number of corporations and concerns, including trade names, which the "parent companies" or the individual defendants and their families maintain and control, as set forth in the bill of complaint; but these defendants deny that they have acquired or organized any concerns or corporations in furtherance of any scheme or plan of action, general or otherwise, for the purpose of restraining or monopolizing trade or commerce, as alleged in the bill of complaint.

"Extent of Industrial Control in the Substitute Foods and Unrelated Commodities:"

These defendants deny that, if the growth of the parent companies and their subsidiaries is permitted to continue unchecked, they will within a few years completely control the various industries in which the defendants are engaged.

These defendants have no knowledge of the averments contained in the bill of complaint as to the value of business transacted by Armour & Company in 1916, and therefore these defendants neither admit nor deny said averments.

These defendants deny that they, or any of them, have any purpose or intention to secure control of the market for "meat substitute foods," as charged in the bill of complaint.

These defendants deny that it is illegal, reprehensible, or against good business morals for the "parent companies" in a large number of instances to contract for the exclusive output of many other companies engaged in the production of so-called "substitute foods" and so-called "unrelated commodities"; or to market the outputs of such companies through the distributive facilities of the "parent companies" or their subsidiaries; or in this fashion for the "parent companies" to control the output of such concerns and the market price of their products as completely as though they themselves owned the producing companies; but these defendants deny that any of them is or has been a party to any combination, agreement, understanding, contract, or conspiracy to restrain trade or monopolize commerce in meat products or substitutes or other foods consumed in the United States.

"Individual Defendants"

These individual defendants admit that they or some of them are officers, directors, agents, employees, or stockholders of Swift & Company, described in the bill of complaint as a parent company, or of the so-called "Swift defendants," described in the bill of complaint as corporations, or some of them, or the so-called "other defendants," described as corporations in the bill of complaint; but they deny that they are officers, directors, agents, employees, or stockholders of any of the other so-called "parent companies" or their subsidiaries.

Said individual defendants admit that some of them are, in their individual capacity, financially interested in stock-[fol. 35] yards, terminal railways, cattle loan banks, rendering companies, and other institutions located at or adjacent to stockyards.

Said individual defendants allege that the corporations dealing in so-called "substitute foods" and so-called "unrelated commodities," referred to in the bill of complaint, are controlled by their respective stockholders acting by and through their duly elected directors and officers.

Said individual defendants admit that in many instances stock certificates representing capital stock of corporations which are owned by said Swift and Company stand in their respective names as a matter of convenience to such "parent company," but that such stock certificates are owned and held by said "parent company"; and these individual defendants deny that there is anything illegal or reprehensible or contrary to good business morals in their said activities.

Said individual defendants deny that they have or exercise any control over the facilities or instrumentalities of the meat business other than as aforesaid, and they deny that by reason of their interests in such corporations dealing in so-called "substitute foods" and so-called "unrelated commodities" the parent companies are enabled to carry out the alleged purpose of the combination charged in said bill of complaint.

These individual defendants deny that their interests in such corporations hereinbefore described are now or will continue to be a sinister or every present means of furthering any attempt to monopolize or to perfect a monopoly, so

that the "parent companies" or their subsidiaries will have or will ever have complete control either of meat products or of all so-called "substitute foods" consumed in the United States, as charged in the bill of complaint.

"Subsidiaries Defendant"

These individual defendants deny that New England Dressed Meat & Wool Company, a corporation organized and existing under the laws of the State of Maine; North Packing & Provision Company, a corporation organized and existing under the laws of the State of Maine; The Sperry & Barnes Company, a corporation organized and existing under the laws of the State of Connecticut; John P. Squire & Company, a corporation organized and existing under the laws of the State of Maine; John P. Squire & Company (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; John P. Squire & Company (Inc.), a corporation organized and existing under the laws of the State of Rhode Island; Springfield Provision Company, a corporation organized and existing under the laws of the State of New Hampshire; White, Pevey & Dexter Company, a corporation organized and existing under the laws of the State of Maine, are subsidiaries of any "parent company" described in the bill of complaint, or that any so-called "parent company" has any ownership, interest or title in and to any of the capital stock or property of any of the said companies.

[fol. 36] These individual defendants further deny that Western Meat Company, a corporation organized and existing under the laws of the State of California; Oakland Meat & Packing Company, a corporation organized and existing under the laws of the State of California; Nevada Packing Company, a corporation organized and existing under the laws of the State of Nevada, are subsidiaries of any of the so-called "parent companies," or any of them, as charged in the bill of complaint, or that any of said "parent companies" has any ownership, interest, or title, directly or indirectly, in or to any of the capital stock or property of any of said companies.

Conclusion

These defendants deny that they or any of them is or has been a party to any combination, agreement, understand-

ing, contract, or conspiracy to restrain trade, or to monopolize commerce in meat products or "substitute foods" consumed in the United States.

These defendants allege that the allegations and charges in each of the paragraphs of the bill of complaint are not sufficiently definite and specific to constitute a violation of law, but are too general and vague.

These defendants allege that the bill of complaint does not allege acts or facts to constitute a violation of law, but that the charges contained in the bill of complaint and in each paragraph thereof are mere statements of legal conclusions.

These defendants deny that complainant is entitled to the relief, or any part thereof, as prayed for in its bill of complaint, and allege that complainant under the allegations of its complaint is without standing or right in this court or in any court of equity.

These defendants deny all and all manner of unlawful acts whatsoever whereof they are in anywise by the said bill of complaint charged; all of which matters and things these defendants are ready and willing to prove as this honorable court shall direct.

These defendants pray in all things the same benefit and advantage of this, their answer, as if they had pleaded or demurred to said bill of complaint.

Wherefore these defendants pray that the bill of complaint herein be dismissed with costs:

Swift & Company (Illinois); Swift & Company (West Virginia); Swift & Company, Inc. (Kentucky); Swift & Company, Ltd. (Louisiana); Swift & Company (Maine); Swift Beef Company; United Dressed Beef Co of New York; J. J. Harrington & Company, Inc.; Bimbler Company; The G. H. Hammond Company; Omaha Packing Company; Plankinton Packing Company; Sturtevant & Haley Beef & Supply Company; E. K. Pond Packing Company; Van Wagenen & Schickhaus Company; Hammond Beef Company; Omaha Meat Company; A. Canfield Commission Company; H. C. Derby Company; Metropolitan Hotel Supply Company; Vermont Supply Company; The Hotchkiss Beef Co.; Western Packing Company; Louis F. Swift; Edward F. Swift; Charles H. Swift; Gustavus F.

[fol. 37] Swift, Jr.; Harold H. Swift; Alden B. Swift; George H. Swift; Laurence A. Carton; Frank S. Hayward; Charles A. Peacock; Wilfred W. Sherman; Wellington Leavitt; John M. Chaplin; William B. Traynor, by Henry Veeder, Their Solicitor.

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF ARMOUR DEFENDANTS—Filed February 27, 1920

The joint and several answer of Armour & Company, a corporation organized under the laws of the State of Illinois; Armour & Company, a corporation organized and existing under the laws of the State of New Jersey; Armour & Company, a corporation organized and existing under the laws of the State of Kentucky; Armour & Company, a corporation organized and existing under the laws of the State of Texas; Armour & Company (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; The Anglo American Provision Company, a corporation organized and existing under the laws of the State of Illinois; The Colorado Packing & Provision Company, a corporation organized and existing under the laws of the State of Colorado; Fowler Packing Company, a corporation organized and existing under the laws of the State of Maine; Hammond Packing Company, a corporation organized and existing under the laws of the State of Illinois; The New York Butcher's Dressed Meat Company, a corporation organized and existing under the laws of the State of New York; Atlantic Hotel Supply Company (Inc.), a corporation organized and existing under the laws of the State of New York; and of J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurance H. Armour, Arthur Meeker, R. J. Dunham, F. Edson White, George M. Willetts, Frederick W. Croll, and George B. Robbins, defendants to the petition or bill of complaint of the United States of America.

These defendants, for answer to the said petition or bill of complaint, or unto so much or such parts thereof as they

are advised it is necessary or material for them to make answer unto, answering, say:

[fol. 38] I

They respectively admit, for all the purposes of this suit or proceeding, the organization and existence of the respective corporate defendants, and that they were organized respectively under the laws of the respective States as stated in said petition or bill of complaint.

II

They respectively, for like purposes, admit that Armour & Company of Illinois referred to in the said petition or bill of complaint as the parent company, is, either directly or through subsidiaries, engaged in (a) the purchase and slaughter of live stock; (b) the preparation and manufacture of dressed meats and edible by-products of the slaughter; (c) the curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal; (d) the production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used; (e) the manufacturing, canning, or otherwise preparing to a limited extent for the market and the sale and distribution of food supplies other than meats, such as are referred to in said petition or bill of complaint as substitutes for meat foods, but deny that it is either directly or indirectly engaged in the manufacturing or canning or packing of fish, vegetables, or cereals; (f) the manufacture and sale to a limited extent and primarily for the purposes of its own business of various other articles commonly purchased and used either by the producer of live stock, the companies transporting the live stock or dressed meats, or the competitors of this parent company, such as are in said petition or bill of complaint referred to as (but which these defendants respectively deny are) unrelated commodities, but these defendants deny that the allegations of said petition or bill of complaint in respect to the activities of said defendants show facts which constitute interstate or foreign commerce.

III

These defendants respectively deny that by the supposed unlawful means and methods set out or complained of in

the said petition or bill of complaint, or any or either of them, or by any other unlawful means or methods, or otherwise, this parent company and defendants referred to in the said petition or bill of complaint as its subsidiaries, or any or either of them—acting by or through their principal officers, who have been made defendants herein, or otherwise—have attempted to dominate, control, or monopolize a very great or any proportion or part of the food supply of the Nation (other or otherwise than as they respectively, lawfully, and properly carry on and so therein lawfully and properly dominate and control their own respective legitimate businesses, as they lawfully may); or that they, or either of them, have thereby or otherwise, or in any way, built up an unlawful monopoly or control over divers and [fol. 39] sundry or any products or commodities in said petition or bill of complaint referred to, or of any products or commodities whatever.

These defendants respectively deny that this so-called parent company and the subsidiaries, defendants, or any or either of them, by the same or similar methods, or otherwise, are attempting to increase or extend any supposed monopoly such as referred to in said petition or bill of complaint or otherwise; or that there is or has been any such, or any monopoly; or that they or any or either of them are enabled thereby, or otherwise, to, or do, artificially control the supply and the price, or either of them, of the food supplies of the Nation, or of any part thereof.

These defendants deny that they either with the other defendants to said petition or bill of complaint, or any or either of them, or otherwise, have created or obtained, or that these defendants, or any or either of them, have attempted to create or obtain, any monopolies or monopoly in or of the interstate trade or commerce, or of any part of the interstate trade or commerce, in or of live stock, meat products and substitute foods, or any or either of them, or in any other products or commodities, or that they have acquired or have, or have ever had, certain or any instrumentalities, facilities, or advantages by which they have been or are or might be enabled to more effectively or otherwise, or in any way, monopolize, or that they have in any way monopolized or attempted to monopolize any part of the trade in such, or any, products or commodities, or that they are or have been engaged in any contract or contracts,

combination or combinations, or conspiracy or conspiracies in restraint of trade or commerce among the several States, either with each other or with any other person or persons.

They deny that they have acquired or have any instrumentalities, facilities, or advantages other than such as are lawful, fair, and proper, and as have legitimately resulted and come, and do legitimately result and come from their industry, application, skill, experience, and efficiency in the proper organization and conduct of their business and trade and such as have been and are open to any others to possess or acquire and exhibit and apply.

IV

These defendants admit that this parent company, Armour & Company is the successor or natural outgrowth of concerns of many years' standing and that its principal business is the purchase and slaughter of live stock, consisting of cattle, hogs, sheep, and calves, the dressing of the carcasses and the preparation and distribution and sale as and to the extent of the dressed meat and food products, and the distribution of the dressed meats in interstate commerce (as well as in intrastate commerce) through various means, by which the dressed meat reaches the retail butchers and is by the retail butchers sold to the consumers, and also including in their said business the saving and utilization for its most valuable uses of every part and portion of the slaughtered animal, and their preparation for [fol. 40] market and their use in the manufacture or production of useful commodities in whole or in part therefrom, and the sale and disposition thereof.

V

The invention and the use by these defendants of refrigerator cars, by means of which the dressed meats might be and are transported long distances and preserved free from decay during transit, have enabled them to widely extend their market for fresh meats, and to slaughter the livestock near the source of supply in the meat-producing sections of the West and to sell the products thereof in the more densely populated and meat-consuming centers of the East, and thereby supply a greatly increased demand therefor and consumption thereof; and they say that this has

resulted in a large economic saving to both producer and consumer and in a greater demand and a ready cash market for live stock to supply such demand for such meats, and an increase of live-stock production as a dependable source of supply of meat and products of meat animals.

The "route" refrigerator cars have been employed to carry such meat supply to the smaller towns and places which require smaller and less than carload quantities; and for the same purpose auto trucks have been introduced, when more prompt and efficient than railroad cars; to supply smaller towns and places or where the places are not reached by railroad service.

That the ownership and use of refrigerator cars by the defendants and of an efficient organization to handle them were and are necessary for the legitimate purposes of defendants' business aforesaid, and the carrying on thereof and of preserving in transit the fresh meats and commodities requiring refrigeration in order to prevent their quick decay and to enable their transportation in good, wholesome condition to the markets where they were to be disposed of and consumed; that such provision and ownership and handling and operation of such refrigerator cars by the defendants and other packers has been going on for many years and has been approved, authorized, and regulated by the Interstate Commerce Commission and its lawfulness, necessity, and economic utility full established and recognized.

These defendants deny that through the ownership and use of said refrigerator cars or the operation of said route cars or otherwise they have or enjoy any unlawful rates, concessions, privileges, or advantages from the railroads or the carriers and say that they ship their products under tariffs and rates, rules, and regulations prescribed in valid, published tariffs on file with the Interstate Commerce Commission and pay the same rates and operate under the same rules and regulations as are lawfully prescribed for and paid and observed by, or available to, all others shipping the same or like commodities.

VI

These defendants admit that such stockyards as are described in said petition or bill of complaint which are public [fol. 41] stockyard markets are employed for the yardage

and care of cattle, sheep, and hogs at places where such live stock are customarily offered for sale and sold and have been shipped for sale, and that customarily all who wish either to buy or sell such live stock have been and are given free access to and the privilege to trade in and buy and sell live stock in such yard. When and as the amount of business at such a stockyard has become or been large enough to call therefor, men who are or become skilled therein have engaged and do engage in the purchase and sale of live stock at such yards as commission men for those who desire to purchase or have live stock for sale. The principal business of such commission men in the sale of live stock for producers or shippers who desire their services and do not wish themselves to trade in person at the yard. Such commission men customarily are the consignees, as well as the agents of the shippers of live stock whom they serve, and have no connection or affiliation whatever with the defendants, and have or need to have no financial or other relationship with owners of the stockyards, other than as tenants of offices and in dealing with the stockyard companies with respect to the yardage and care of live stock consigned to them and the allotment to such commission men of pens in the yards in which the live stock consigned to them is yarded and sold.

The sales and purchases of live stock at such yards customarily take place in, at, or near the respective pens in which the live stock dealt in are confined and in which they are shown to and examined by the proposed buyer.

The live stock are sold by weight per 100 pounds, and upon the sale are weighed by the stockyard company from seller (owner or commission men) to buyer; and the stockyard company makes and keeps a record of the sales and weights as well as of the receipt and yardage, feeding, and care of the live stock.

Statistics and data as to the market prices for each day, including numbers and kinds and grades of live stock received or to arrive on that day at that stockyard and at other yards, and prospective receipts are publicly posted by the stockyard company at the Exchange Building and usually at other well-known places in the yard.

While the stockyard company has and exercises such control of the yards and of its own provision and furnishing of the facilities which it provides as the performance of

its function in those respects calls for and makes necessary, it makes no unjust or unfair discrimination, of which these defendants are aware, as between different companies or persons who make use of such facilities, either as to providing sites or locations for packing houses or among those desiring them, or as to granting switch tracks or sidings or other accommodations, which are subject to the control of the public utilities commission or similar body in the State, or of the Interstate Commerce Commission, or as to location of banks or loan companies or offices of commission men, or the allotment to commission men of pens, except that (as defendants are informed) there is or may be observed a long-standing custom of permitting commis- [fol. 42] sion men to retain their live-stock pens from year to year as they do their offices.

These defendants say that if there is or has been any unjust, unfair, or intentional discrimination on the part of any stockyard company, or of any terminal or other railroad at any such yard or yards, toward or for or against any packers or buyers or users or sellers or commission men, in any or either of the matters or respects aforesaid, or in or by practicing delay in allotting animals brought or in switching loaded cars to connecting lines, or in any other respect whatever, these defendants, as to any such case have not, nor has any or either of them, been knowing or privy thereto or in any way whatever responsible therefor.

The statements in the said petition or bill of complaint of the character of services performed by the commission men and with respect to the services performed by the stockyards companies are believed to be accurate.

These defendants believe it to be true that the charge of the stockyard companies for yardage, feed, and other services and materials furnished by them are prescribed by the respective stockyards companies rendering such services. So far as these defendants, respectively, have any information or are aware of the services, facilities, and conveniences rendered by the respective stockyards or of the charges made by them therefor, they are rendered and made fairly and without any discrimination as between different shippers, commission men, companies, and persons to or for whom they are rendered or made. With respect to each and every such matter or things, these defendants

have not and have never had or exercised any control, interference, or say whatever to or toward the giving or showing any partiality or discrimination to or against one customer thereof against or to another.

These defendants deny that with respect to the allotment to or the seeking by any company or person, other than themselves, of packing sites or sites for packing houses, or — respect to the number of plants or packing houses that should be established at the respective stockyards or any or either of them, or with respect to the allotment to or securing by any banks or loan companies of locations or sites for their banks or offices, or of any or either of them in or near stockyards, or with respect to the designation of how many and which banks or loan companies might establish themselves at or near such yards or any or either of them, these defendants have not, nor has any or either of them, interfered or sought to interfere, or to direct or control the same.

Defendants deny that they have or either of them has jointly or severally used or exercised any power, control, or interest they may have in any stockyard companies to hinder, impede, or prevent the establishment, enlargement, or development of packing plants at any such yards, nor has there been any such hindering, impeding, or preventing, so far as they have any knowledge, information, or belief. The action of any such stockyard company or companies has been to encourage the establishment of such packing plants and businesses as would tend to develop [fol. 43] and increase the legitimate business and business interests of such stockyard companies. That this same statement applies to the action of the stockyard companies with respect to sites for banks and loan companies.

While such banks and loan companies as are, or may be, located at or near the stockyards do a considerable business, according to the information and belief of these defendants respectively, the great bulk of such cattle paper is not held by such banks or loan companies, the principal business of which is not to lend money but to discount and guarantee the note of the live-stock producer or dealer and thereby lend and pledge their credit to enable such live-stock producers or dealer to secure money from the eastern banker necessary for the purpose of his business, and any statement or inference in the said petition or bill of com-

plaint that stockyard companies through control of bank or loan company sites can or do wield or have an influence or effect over stockmen or raisers of or dealers in live stock, in any way or sort whatever to the detriment or prejudice of such stockmen, raisers, or dealers is untrue. Any statement or inference in the said petition or bill of complaint that these defendants, or any or either of them, have wielded or exercised, or do wield or exercise any such influence, or that they, or any or either of them, have attempted or do attempt to wield or exercise or have any such influence is untrue and baseless.

VII

As to terminal railways: Defendants say that in order to facilitate the connection at stockyards with main or trunk line railroads for the purpose of switching cars from such railroads to stockyards, from yards to packing plants, from packing plants to main or trunk line railroads, it is necessary and proper that terminal railways should be constructed for such purpose, and that stockyard companies have established such roads and have acquired an interest in and use such roads to promote the development and use of stockyards at a satisfactory and attractive market center for live-stock producers and shippers, offering and affording such producers and shippers adequate transportation service at such stockyards, and offering and affording all industries there located like service. These defendants deny that they, or any or either of them, have sought or acquired or exercised, through their interest in stockyard companies or otherwise, any interest or control in such terminal railways for the purpose of discriminating against other packers or independent buyers or engaging in, bringing about, or doing any improper or unlawful practices, or been responsible for any unlawful acts or conduct whatever in connection therewith.

VIII

As to market papers and journals: Defendants say that producers of live stock require and should be furnished full, accurate, and unbiased reports of the demand for live stock, the prices prevailing at various markets, and such other information as to market or trade conditions as they may desire. These defendants deny that they, or any or

[fol. 44] either of them, now own any interest whatever in such market papers or journals, or that they have ever owned an interest in such papers or journals published at the larger and well-established markets, such as those at Chicago, Kansas City, or Omaha, and defendants say that such financial interest as they may have had in the past in market papers and journals at any of the smaller yards was acquired for the purpose of rendering aid to and was prompted by the desire to develop these places as market centers attractive to producers of live stock through proper publicity, and advertisement, and dissemination of accurate information, regarding market conditions, both local and general, and that such papers and journals are a necessary and proper adjunct to the building up and establishment of a live-stock market; that the statistical information therein published and disseminated is collected and secured from the records of the various stockyards open and available to the public generally and others locally, and published in all daily papers where the yards are located.

IX

As to rendering plants: It is true that while in transit and after reaching the yards live stock often die, either from disease or accident, and the stockyard companies, as a matter of proper regulation, arrange for the disposition of the same; and that there has customarily been only one such rendering plant at each of the important yards. Such regulation, which was the result of many years of experience, is primarily in the nature of a sanitary precaution, and it is essential that disposition of such dead animal bodies be prompt and efficacious, and the experience of many years has demonstrated that such prompt and efficient service can best be secured by the method followed at most of the stockyards of disposing of such animals to some one rendering company. These defendants say, however, that they have not, nor have any or either of them been, nor are they or any or either of them responsible for any improper practice therein or in connection therewith.

X

Referring to the specification in the said petition or bill of complaint as to the consequences or results flowing from the control by the stockyard companies of the facilities per-

taining to the stockyards, these defendants say (a) that of course a profit is properly derived from the live-stock industry by and from the services and charges rendered by the stockyard company to such industry, and these defendants assert such profit will be so properly derived therefrom whether these defendants or any of them own or control any interest in said stockyards or not; (b) that if there be a potential means of favoritism on the part of stockyards in dealing with commission men or influence over them or in the alleged power of the stockyard companies to grant monopolies, carrying with it profit to banks, cattle loan institutions, rendering plants, or sources [fol. 45] supplying food for live stock and others; or (c) if there be a potential means to prevent the establishment of new packing plants or to hamper the growth of those in existence; or (d) to prevent the development or limit the number of new markets, or to centralize or restrict business to stockyards so controlled; or (e) if there be any such means of favoritism from having peculiar or exclusive access to information concerning the receipts and sale of live stock, its disposition and the dissemination of information to the producers or others, and these defendants assert that the receipts and sales of live stock are public records of the various stockyard companies, open and available to the public generally, and that such information is posted on bulletin boards at such yards and published in the daily papers where the yards are located; these defendants deny that their interest in or control of any stockyards has been used as a means of any such favoritism or discrimination or any or either of the evils or improper practices so charged to be possible in the conduct or control of the existing stockyards, or any or either of them.

They respectively deny that they, or any or either of them, have at any time or in any way participated in or favored, or been privy to any such conduct in the control or operation of the stockyards or the facilities appertaining thereto, in any case.

XI

As to branch houses, route cars, auto trucks, and cold-storage warehouses: Defendants are without information upon which to base a belief as to the total number of

branch houses maintained by interstate slaughterers other than this defendant parent company.

The defendant parent company, Armour & Company, has approximately 400 of these branch houses located at or near the centers of consumption. These are necessary in order to enable it to properly handle a perishable product in such manner as to maintain adequate supplies at all times.

These defendants deny that said branch houses are cold-storage stations, but, on the contrary, assert that they are marketing and manufacturing facilities and are maintained for the express purpose of facilitating the distribution of its perishable products in such prompt and expeditious manner as will insure the same reaching the retail trade and ultimately the consumer in the best possible condition; that approximately one-half of these branch houses are equipped with refrigerating machinery, and that many of them located in the large centers are equipped with facilities for turning raw materials into the finished products—that is, smoking meats, boiling hams, and manufacturing sausage; that this is necessary in order not only to meet trade requirements but to place these defendants upon an equal competitive basis with local packers operating killing establishments; that they are maintained by these defendants for the purpose of marketing and distributing of their products and to afford to the local retail butchers the opportunity to make purchases of meat and meat products while in fresh, wholesome condition; and that such branch [fol. 46] houses are equipped with only sufficient cooler space for the needs of their marketing facilities in the particular locality where they are located, the turnover of such branch houses in said products being usually every week or every two weeks at the most.

These defendants say, and they submit that it is obvious and not open to question that such branch houses for the proper receipt, care, sale, and distribution of their products and merchandise are lawful and proper business facilities therefor and for supplying the wants of their customers and consumers. Defendants further say that direct and active competition exists between all of the various branch houses of this defendant corporation and those operated by each and all of the other defendant corporations named in this bill of complaint and between those operated by others en-

gaged in the meat-packing industry and various commission merchants and others who have the necessary facilities for handling like products; that such branch houses are recognized by the various communities they serve as of great and permanent value to the members of such community as well as of those resident in the immediate vicinity as affording to the people of such communities and surrounding territory an opportunity to secure under competitive conditions meats, meat products, and other commodities while in a fresh and wholesome condition.

Route cars are refrigerator cars which travel certain routes at stated intervals, supplement the branch houses and furnish prompt, efficient, and adequate service to such towns and places as are not of sufficient size in themselves to warrant maintenance of a branch house. These cars carry only such products as have been previously ordered and are needed to supply such orders. These defendants are without information upon which to base a belief as to the number of such route cars sent out by other defendants, or the number of dealers reached, or the number of cars owned by such other defendant parent companies.

Motor trucks make possible the rendering of such service to many towns and places which are not reached or served by route cars, or by branch houses. These defendants deny that these defendants reach or serve with such auto trucks a total of 20,836 towns throughout the United States and say that the number of towns so reached is about 1,500.

As to cold-storage warehouses: These defendants say that cold-storage warehouses were first used in connection with the packing business for the chilling of meats and later were adapted to branch house use so that meats and meat-food products might be kept in prime condition for sale to the retailer; that from the beginning, such warehouses have been, and now are, necessary instrumentalities in connection with the business of these corporation defendants in order that such business may be properly and efficiently handled and the volume of their slaughter of live stock and sale of dressed meat and meat-food products, for both domestic and foreign trade, extended to meet the constantly increasing demand therefor; these defendants further say that they have established or acquired an interest in cold-storage [fol. 47] warehouses in large eastern seaboard cities and

elsewhere where cold-storage facilities or space was required for the storage of commodities wherein said defendants were interested and that these defendants have leased and do lease space therein to the public where, owing to seasonal conditions or fluctuations in foreign or domestic demand, it has not been possible completely to utilize such cold-storage facilities and space for defendants' then existing needs; these defendants deny that their establishment, use, or control of cold-storage warehouses was for the purpose, or has been employed or used to aid, or has aided, in any alleged control of the price of meats and substitute foods or any other commodity or commodities.

XII

As to the acquisition by this defendant parent company of interest in or control of stock[illegible]rds, or the facilities appertaining thereto, and their p[illegible]ose therein:

As to stockyards: These defendants jointly and severally deny that through a concert of action or pursuant to a common understanding with, or by acquiescence of any one or more of the parent companies named in said petition or bill of complaint, or otherwise, they or any or either of them set about the acquisition of the various stockyards and appurtenances and privileges incidental thereto for the purpose (as is implied in said petition or bill of complaint) of securing any such advantage or advantages as are alleged in said petition.

These defendants jointly and severally deny that there is or ever was any common purpose, plan, or design to which they, or any or either of them, were a party, to force the withdrawal of outside or any investors, or so-called independent packers, or any or either of them, as dominating or other factors in the ownership or management of most or any of the important or any stockyards; or that by or through any such purpose, plan, or design outside investors or so-called independent packers have been gradually or otherwise so forced out or been replaced by the defendant parent company, Armour & Co., or its representatives.

These defendants deny that they or any or either of them have availed themselves of any interest they may have in any stockyards or exercised any control they may have over such stockyards for the purpose of electing officers or directors or otherwise dominating or controlling the policies

thereof for the purpose of granting exclusive privileges, such as the right to purchase dead animals or the right to furnish supplies and facilities and fix the location or give favorable sites for cattle banks or cattle loan companies to concerns or corporations in which they or some of them or individuals, who are stockholders in this defendant parent company, hold the controlling stock or that they have, acting in concert or otherwise, employed any of the powers and privileges alleged in and more specifically set forth and discussed in said petition or bill of complaint under the title "nature of the business and method by which it is conducted" with the intent or purpose or effect of discouraging [fol. 48] or suppressing the establishment of independent packing establishments or dwarfing the growth of such independent packing companies.

These defendants jointly and severally deny that this parent corporation, Armour & Company, or its subsidiaries, or the individuals who, as alleged in the bill of complaint, own and control this parent company and its subsidiaries were enabled by any of the alleged methods or means set forth in said petition or bill of complaint to obtain vast profits from the management of stockyards or granting of privileges appurtenant thereto; these defendants further deny that this parent company, Armour & Company, or its subsidiaries have thus been enabled, as is alleged, to enjoy and realize or otherwise have obtained or enjoyed or realized such, or any, profits without the same appearing or being disclosed in the profits of this said defendant parent company; these defendants further deny that they, or any or either of them, have attempted thereby or otherwise to monopolize the meat industry of the country or artificially to control the ultimate price which the consumer pays for meat and meat products.

These defendants say that in the course of the growth and development of the live-stock and producing and slaughtering and packing industries they have aided in the establishment of stockyards at points near or nearer the live-stock production than theretofore existing stockyards, and have taken over, or assisted in taking over and developing, what were small and inadequate yards at other points where they had been inaugurated, and have established at such places extensive and adequate packing plants, with the result that growers of live stock about or tributary to these

localities now have properly equipped and efficiently operated marketing places so situated in relation to their farms and ranches as to afford them a ready market for the disposition of their live stock at a saving of freight, labor, cost, shrinkage, and other expenses. That the defendants have not heretofore in any way hindered, impeded, or prevented the establishment or operation of such or any stockyards by others, or the establishment thereat of any packing plants of others than themselves. That with respect to some of such yards, others of the defendant parent companies have also joined or co-operated in the establishment and development of such yards and have established packing plants thereat.

That in the cases where these defendants, or any or either of them, have established or aided in the establishment of stockyards, the motive of the defendants therein has been the proper motive of building up, or developing, or aiding in the building up, or development, of the industry and trade in live stock and the products thereof, as well for the benefit and development of the live-stock producing industry as of their own packing industry, and in certain cases principally for the establishment and development of the live-stock producing industry, and to bring a market for the livestock near to the production thereof.

That so far and to such extent as any or either of these defendants have acquired and held or owned any capital stock [fol. 49] or other financial or property interests in any or either of the live-stock yards or stockyard companies, such acquisitions and investments were and are held and owned for proper and legitimate purposes and from proper motives and considerations, and not otherwise.

These defendants say that the great industry in which they have been and are engaged of producing fresh meats and other products of slaughtered cattle, hogs, and sheep, and which was built up by the predecessors in the ownership and conduct of the defendant parent companies, and has been continued by the present owners and managers thereof, is and always has been properly allied with and dependent for its proper development and success upon live-stock raising and production, as well as upon the provision of adequate markets and facilities for the marketing of such live stock; and that in the interest of their own packing industry and the provision of markets and market

facilities, they have been guided and led into a proper interest in the development, maintenance, and carrying on of live-stock markets, and some of these defendants have, as they properly and lawfully might, acquired financial interests in the capital stock of certain stockyard companies. But at no time have they or any or either of them used or attempted to use the same in any way whatever to the prejudice or detriment of live-stock producing interests or other interests concerned in or affected by the operation, management or conduct of any stockyards, or upon any other theory or conception than that their best interests in such stockyards, and their investment therein call for and require such conduct and management thereof as would best serve and promote the interests of the live stock producing industry and the extension and increase in the production of live stock, upon which the success of such stockyards depended and the provision by and through such yards of the most efficient facilities and service for the receipt and care and marketing of such live stock.

These defendants—maintaining that the acquisition and holding by them or any or either of them of shares of the capital stock of stockyard companies as and for the purposes aforesaid and for investments and for the dividends or profits therefrom, are lawful and proper and not against any public policy or ground for any just or fair animadversion or criticism—nevertheless say that they are entirely willing that such stockyards shall be controlled and the burden of their maintenance and operation assumed by others who will properly maintain and operate such yards in and for the best interest of the live-stock industry as market centers for the producers of live stock, with convenient, suitable, and efficient locations and facilities thereat or near thereto for the packing industry and the manufacture of live-stock products.

They maintain, however, that no other person or persons, company or companies, are so much concerned in the establishment and in the proper conduct of such yards where needed for or for the building up and increase of live-stock production as are the defendants and others in the meat-packing and live-stock industry, who also from their experience, as well as from their large interests in their own in-

dustry, are qualified for as well as so concerned in the proper conduct of stockyards.

[fol. 50] XIII

As to contracts in restraint of trade: These defendants deny that they, or any or either of them, have entered into or have any unlawful contract or contracts, combination or combinations, or conspiracy or conspiracies to restrain trade or commerce, or to artificially prevent between the defendants to the said petition, or any or either of them, or between these defendants, or any or either of them, or any other or others, or otherwise, competition in the prices for which live stock or meat or meat products or any other commodities are purchased or sold.

These defendants deny that there is any percentage-purchase arrangement between this defendant parent company and the other parent companies, or any or either of them, such as is referred to in the said petition or bill of complaint or otherwise. They deny that there is any such arrangement between this defendant parent company and the other companies, or any or either of them, having as its ultimate or other object the elimination of competition between them in the purchase of live stock or in the sale of dressed meats. They deny that there is any contract or agreement or arrangement or understanding to which these defendants, or any or either of them, are parties or privies for any limitation upon the source of supply, or upon the volume of business, or for limiting the purchase of live stock, or to limit the volume of their dressed-meat products.

They deny that these defendants, or any or either of them, are under any agreement or understanding for or concerning or recognizing certain percentages or proportions as between themselves or any or either of them, and any other defendant or defendants, to which they deem that each or any company was entitled, or that they, these defendants, or any or either of them, have any agreement or understanding to or do so gauge their purchases that annually, or at any time, their respective purchases should approximate actually or substantially the percentage so agreed upon or any percentage; or that as a means of perfecting said alleged arrangement or otherwise, divers percentages, whether varying at different stockyards or otherwise, are agreed upon, or that understandings have been

had that certain of the parent companies should buy in certain yards or should refrain from buying in certain yards, or that in order to prevent such plans from being disarranged by outsiders, or for any other reason, agreements have been made, or any agreement has been made with such or any outsider by which purchases between this parent company, or any or either of these defendants, and the so-called independents, or any or either of them, were placed or were, or were or are to be, upon a percentage basis, whether similar to the above or otherwise.

These defendants further say that as between this parent company and each and all the other parent companies named as defendants herein and all others engaged in the packing industry there is now and at all times in said bill of complaint referred to has been active and unrestrained competition, both in the purchase of live stock and sale of [fol. 51] dressed meats, meat products, and other commodities, and these defendants deny that any apparent or approximate uniformity of percentage of the receipts of live stock purchased annually by this parent company and its subsidiaries evidences or tends to prove any such contract or agreement between this parent company and all or any of the other parent companies as is alleged and referred to in said petition or bill of complaint. This parent company has the purpose and intention of securing in active competition with each and all of the other parent companies and other packers such quality of live stock at the various stock markets that experience over a period of many years has demonstrated it must of necessity have in order to increase its volume of business and to provide for the needs of its trade, and that it may not lose that established position and trade it has taken years to gain.

These defendants say that during the year 1910 an indictment was returned in the district court of the Northern District of Illinois against certain individuals who were then officers of the defendant parent companies, Armour & Company, Swift & Company, and Morris & Company, charging present petition or complaint that, among other acts, such defendants (who were therein alleged to be the principal owners and real managers of said companies) were engaged in a combination in restraint of trade and commerce, which combination was one for eliminating competition between the same defendant parent companies

Armour & Co., Swift & Co., and Morris & Co., in the purchase of cattle and the sale of fresh meat; that, in pursuance of such unlawful agreement, said defendants refrained from competing with each other in the purchase of cattle, and fixed the number of cattle to be purchased by or for each of said companies and agreed upon the amounts to be bid for cattle from day to day and fixed the prices at which fresh beef should be sold. The respective defendants named in said indictment entered a plea of not guilty and, upon trial of said cause, the evidence concerning all and every the acts, transactions, or conduct of business which had been done or carried on by such defendants or any or either of them, and which in the petition or bill of complaint herein are charged to constitute a contract, combination, or conspiracy in restraint of trade, or a monopoly of any part of said trade in or in respect of either the purchases of cattle or the sales of fresh beef—or acts, transactions, or conduct of business like in all respects to those done by these defendants and so charged in said petition or bill of complaint herein as constituting such alleged unlawful restraint of trade or a combination or conspiracy in restraint of trade or a monopoly thereof—was presented, adduced, and exhibited by the Government on said trial as constituting or showing the guilt of the respective defendants named in said indictment and the said cause was, upon the evidence and testimony submitted, and the case made by the Government in support of said indictment, submitted to the jury—the defendants not introducing or offering any evidence, whereupon the jury, having been duly charged, retired and considered, and afterwards returned a verdict of not guilty, and thereupon said verdict was duly recorded and judgment thereon entered.

[fol. 52] And these defendants maintain and charge that the said verdict and the judgment of said district court at Chicago, acquitting said defendants constitute positive and incontrovertible proof and evidence that the acts, transactions, and conduct of their said business by these defendants which are referred to and complained of in the said petition or bill of complaint herein, which are like or similar to the acts, transactions, and conduct of such business in the said indictment referred to, or any or either of them, do not constitute any unlawful restraint of trade or commerce, or any combination or conspiracy in restraint of

trade or commerce, or any monopolizing of or attempt to monopolize any part of such trade or commerce, but are lawful and proper.

These defendants respectively deny that means have been adopted by them, or any or either of them, or to which they or any or either of them, are parties, by which sales to outsiders or so-called independents or others were or are controlled by the parent companies or any or either of them.

These defendants respectively deny that control over the stockyards or stockyard-loan institutions, or terminal railways, or other interests, or any or either of them, has discouraged opposition by either commission men or so-called independent packers or others, or has existed.

XIV

As to control of so-called substitute foods: Defendants admit that in dealing in and handling so-called "substitute foods" or "unrerated lines," these defendants availed themselves (as is alleged in said bill) of the route cars, auto trucks, branch houses, and storage warehouses owned or controlled by them, and that further (as is alleged in said bill) these facilities intended primarily for the sale of meat, were employed, with comparatively no little increase of overhead expense, in the distribution of so-called substitute foods and unrelated commodities, and the defendants were enabled thereby to reach remote spots.

Defendants allege that prior to the Great War, the business of these defendants in canned vegetables, canned and dried fruits, canned fish, rice, beans, and other non-meat foods, was very limited and confined practically to local purchases by a few individual branch houses, usually as an accommodation to some of their customers, but when our country went into war and a survey of the meat food situation of the world made it evident that the United States was to be (as it was) called upon to furnish practically the entire supply of pork product and the major supply of beef for not only our country but our Allies, and everyone was urged to eat as little meat as possible, these defendants looked around for some products to sell to keep their enormous branch-house organization intact and employed (so far as not employed or used in such export and war business), and their cost to sell within reason, and

largely increased these defendants' business in these lines. The reason for it was apparent when, as they allege upon information and belief, 35 per cent of defendants' entire production of meat food in this country was used by the allied Governments.

[fol. 53] Defendants expressly deny, however, that they have at any time entertained the intention or purpose of controlling the Nation's supplies of so-called substitute foods or unrelated products, or any other commodity or commodities, but that on the contrary, their purpose and intention in entering into and continuing in such lines of business and employing their organization and equipment therein, was entirely lawful as a natural and legitimate extension of their business, and moreover, based upon the soundest of economic grounds, to wit, the complete utilization of facilities and distributive organization necessarily required in the handling of meats and meat-food products and employed in connection with the marketing of so-called "substitute foods" and "unrelated lines" without placing upon the consuming public any burden of additional expense for the maintenance thereof.

Defendants further aver that the volume of business transacted in such lines amounts to but a small percentage of the total volume handled by wholesale grocers and other dealers in such commodities, and defendants allege upon information and belief, that during the year 1918 the wholesale grocers throughout the United States handled more than $3,500,000,000 worth of wholesale grocery business, and that the total amount of such business in these lines handled by all the defendants named in said petition or bill of complaint, if combined, would not amount to more than 3 per cent of the entire total for the country; and further, that the amount of business handled by the defendant parent corporation, Armour & Company, during the year 1918 in canned fish, vegetables and sundries, canned and dried fruits, fruits preserves and grape juice amounted to 4.62 per cent, of said defendant, Armour & Company's total volume of business.

Defendants further allege that the increase shown in the volume of business handled in such lines was and is due to the fact that defendants were enabled to secure such business by reducing the cost necessary in connection with marketing such products through complete and efficient

operation and use of their facilities and branch-house space, thereby rendering better and more efficient service both to the producers of said commodities and the consuming public. These defendants deny that the effect of their entry into such lines of business has been that of gradually eliminating competition, but are informed and believe and so allege that during the period 1907-1918, 1,101 wholesale grocers entered the highly competitive business of selling food products and further allege upon information and belief that during the year 1918 there were 3,887 wholesale grocers through the country, and that at present there are over 4,000 wholesale grocers in active compe-tion with the defendants in such trade.

These defendants deny that they have eliminated or lessened, or sought to eliminate or lessen, competition in meat products.

These defendants deny that they have eliminated or lessened or sought to eliminate or lessen competition in so-called substituted foods, or that they have in any way sought to prevent the public from turning to or using substituted foods. They deny that they set about controlling [fol. 54] or have sought to control the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, and cheese, or any or either of them, or other substitute foods, or that they or any or either of them had any such purpose.

These defendants deny that in their trade and business in so-called substitute foods they fixed or attempted to fix prices so low as to gradually or otherwise eliminate competition or that they fixed prices with any such purpose. They say that their prices were fixed with respect to the normal conditions and facts which govern or affect the market price of such commodities, such as supply and demand, costs and expenses, and fair profit. They maintain that their facilities for conducting such business, their organization, skill, industry, and business experience were all proper and lawful elements in securing trade; and that they had or exercised no unlawful discrimination or advantages in securing such business, and they maintain that any growth or increase in their business obtained in the manner aforesaid, in competition with others, was the result of fair competitive trade. They deny that the securing of trade in such manner is in any sense monopolistic or in

violation of law or public policy; or that trade so secured, as their trade was secured, is or may be a monopoly within the meaning of the law or in fact.

XV

As to the alleged monopolistic attempts of defendants: These defendants respectively deny that they or any or either of them have in any way or at any time attempted to acquire, gain, or get any monopoly of or to monopolize any part of the trade or commerce.

The alleged comparison in the said petition or bill of complaint of the net worth of the defendant parent companies, so far as the same relate to Armour & Company in 1904 and in 1919, is inaccurate and misleading as bearing upon this question.

In the first place, the values of the same properties of this defendant parent company employed in its business in 1904 and 1919 fairly bear no comparison, the normal and proper growth and increase in such values being very large. The value of materials and commodities in an inventory of 1904, or thereabouts, as compared with the value of the same or like commodities of the same amount in 1919 would be very small, or much smaller, and such comparison would be of no value upon the question here under consideration. Almost the entire net profits of the business of this parent company from year to year during the said period of 15 years have gone to increase the capital and have been invested and employed in the extension of its business and its facilities, a very small percentage of such profits having been drawn out, and the added and compounded earnings from such invested profits properly and greatly increased the net worth of said company.

The said company has been during said period a very large borrower of money upon its paper, its actual working [fol. 55] capital at any period of time during said 15 years being thereby very greatly increased, and its earnings include its profits upon such actual employed capital. During said period of 15 years said company further added to its working capital the sum of $50,000,000, or thereabouts, received from the issue and disposition of that amount of its 4½ per cent bonds and was thereby enabled thus to increase its employed and working capital. During said period and in 1918 the said company issued and disposed

of its convertible debentures to the amount of $60,000,000 and was thereby enabled to and did add that amount to its employed capital, and that of such convertible debentures so issued approximately $50,000,000 par value at the date hereof have been converted into the shares of the preferred stock of this parent company and constitute part of its permanent capital. That during the 10 years from 1909 to 1918, inclusive, the sales of said company increased from year to year from and through the extension of its business and trade from $225,000,000 in 1909 to $861,000,000 in 1918; that such increase during the Great War was exceptionally great, owing to conditions produced thereby. That the average net profit upon said sales during said period of 10 years was 2 48/100 per cent; that such rate of net profit was lower than or as low as in any other industry. That the net worth of this defendant company in 1904 was the sum of $45,000,000, or thereabouts, and that the net worth of said company at the end of 1918 was $173,000,000, or thereabouts; so that the net worth of said company at the end of said period of 15 years is less than four times its net worth at the beginning of said period; but in reckoning the value of the said company at the end of 1918 the increase in the values of commodities and property at the close of said period as compared with the values at its beginning amount to a large sum, and this should be taken into consideration in comparing the value of the company at the beginning with its value at the end of said period.

These defendants deny the accuracy of the statement in the said petition of the increase of the net worth of the said parent companies from 1904 to 1919, or the value or effect of the figures stated in said petition with respect thereto as showing or tending to show, and these defendants deny that they show or tend to show any attempts at monopoly on the part of the defendants.

The increase in the amount of the sales of this defendant parent company in the said 15 years, which has been large, has been due and owing to legitimate trade conditions and to the business skill and industry of the defendants and their officers and employees, and the increase and growth of its business thereby produced, and not to any other cause. These defendants deny that the growth, extension, and increase of the business so brought about and resulting is monopolistic or in violation of the Sherman or other anti-

trust acts, or their spirit, or their purpose. These defendants deny that their personal control of any packing houses or slaughtering companies, or their interest in stockyards, terminal railways, rendering companies, cattle-loan institutions and banks or other corporations, or in any or either of them, have or had their inception in or [fol. 56] depend for their prosperity upon advantages or privileges growing out of the interlocking or any control of the stockyards or stockyard appurtenances.

These defendants have not information on which to state or base a belief as to the number of corporations or concerns or trade names maintained or controlled by the parent companies or the individual defendants (other than these defendants) or their families, or in which they have a significant or minority or other stock interest or an interest of unknown extent. But these defendants allege that any such facts or statement thereof are and is immaterial to this cause. They respectively deny that there is anything unlawful or against public policy or subject to challenge herein, in or from the fact, if and so far as it is a fact, of the maintenance or control by the parent companies (within their respective charter powers), or the individual defendants or their families, of business corporations or concerns or trade names, or in their holding minority or other stock interests or other interests in any such corporations or concerns, or in their having acquired or organized or maintained them so long as they were useful for their purposes, and when no longer useful dissolving such corporations or concerns. These defendants respectively submit that the allegations of the said petition in that behalf are immaterial. These defendants deny that they, or any or either of them, have acquired or organized, or become or are interested in any concerns in furtherance of any supposed general scheme or plan of action which is unlawful or against public policy or improper.

XVI

As to the extent of industrial control of defendants in so-called substitute foods and unrelated commodities:

Defendants deny that the growth of the control of these defendants, or any or either of them, in all or any of the various industries in said petition referred to, if permitted to continue unchecked, will be complete.

With respect to the business in 1916 of this defendant parent company in canned fish, vegetables and sundries, canned and dried fruits, fruit preserves (soda fountain supplies), and grape juice, and the amount thereof in 1916, and in 1918, and the increase in the volume thereof in said two years, these defendants say that this increase in business was lawful and proper, and is to be attributed to the skill and energy and business ability, and proper business organization and facilities with which said business was conducted; and that such increase in business was lawfully accomplished, and without violating any law or public policy. These defendants are unable to state whether any or how much of such increase of business was acquired "at the expense of competitors"; but they say that in all competitive business, the business properly secured by each of the competitors is, within the sense and meaning of such allegation in said petition, acquired at the expense of other competitors; and that such is the proper and lawful operation of competition, which is authoritatively defined to [fol. 57] be the seeking by two or more of trade which only one may secure.

These defendants deny any purpose on their part to secure control of the markets for meat substitute foods; and that their engaging in such trade in competition with hundreds of others who are also engaged in such trade, and the purpose of the defendants to secure, by proper competitive methods, a portion of such trade as might come to them, is lawful and proper. There is no allegation or charge in said petition or bill of complaint nor is there in fact any basis for a charge of the use by these defendants of any unfair methods of competition in such trade.

XVII

These defendants admit that these individual defendants are respectively either officers, directors, agents, or employees of the parent company, Armour & Co., its subsidiaries, and that some of the defendants are large, and other smaller stockholders of said parent company and subsidiaries, or one or the other or both, and others of the defendants are not stockholders in either or in any of said companies, and are only, if at all, connected with the various matters alleged and charged in the said petition or bill of

complaint, as and while they are so connected with one or the other of said companies as officers or employees, and that they are and can only be proper defendants herein or properly subject to the jurisdiction, order, or direction of the court herein, with reference to their action as such officers or employees, while connected with such defendant companies, and not otherwise.

These defendants respectively deny each and every allegation of said petition or bill of complaint not herein admitted; and having answered, they pray to be hence dismissed, etc.

Armour & Co.; Armour & Co. of New Jersey; Armour & Co. of Kentucky; Armour & Co. of Texas; Armour & Co. (Ltd.) of Louisiana; The Anglo-American Provision Co.; The Colorado Packing & Provision Co.; Fowler Packing Co.; Hammond Packing Co.; The New York Butchers' Dressed Meat Co.; Atlantic Hotel Supply Co. (Inc.); J. Ogden Armour; Charles W. Armour; A. Watson Armour; Laurance H. Armour; Arthur Meeker, R. J. Dunham, F. Edson White, George M. Willetts; Frederick W. Croll; George B. Robbins. by Chas. J. Faulkner, Jr., Solicitor for Defendants.

[fol. 58] In Supreme Court of the District of Columbia

[Title omitted]

Answer of Morris Defendants—Filed February 27, 1920

The Joint and Several Answer of the Following-named Defendants to the Bill of Complaint Filed Herein

Corporations: Morris & Company (Maine), Morris Packing Company (Maine), Morris & Company (New Jersey), Morris & Company, Ltd. (Louisiana), Morris & Company (Pennsylvania), Joseph Stern & Sons, Inc. (New York), Brooklyn Beef & Provision Company, Condit Beef & Provision Company, Corwin-Wilde Company, Chamberlain & Company, Inc., Donnelly & Company, Inc., National Hotel Supply Company, J. M. Wilson & Company, Middletown Beef & Provision Company, Glenn & Anderson Company;

Individuals: Edward Morris, Nelson Morris, L. H. Heymann, C. M. Macfarlane, H. A. Timmins, Defendants.

These defendants now and at all times hereafter saving unto themselves, and each of them, all manner of benefit and advantage of exception which can or may be had or [fol. 59] taken to the many errors, uncertainties, and other imperfections in the said bill of complaint contained, for answer thereto, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

Court's Jurisdiction

These defendants admit that Morris & Company of Maine, is engaged in the character of business mentioned and described in the bill of complaint, but say that the bill of complaint does not state facts which show that such business is interstate and foreign commerce.

These defendants deny that they, or any of them, have ever been a party to any contract, combination, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, either in the purchase of their raw material, or in the sale of their finished products; and these defendants expressly and distinctly deny any and all allegations, charges, intimations, or inferences in the bill of complaint contained to the effect that the defendants, or any of them, are in any illegal combination, conspiracy, or contract of any kind or description with the other defendants, or any of them, or with any other person, firm, or corporation, either as to the purchase of their raw material, the sale of their finished product, or otherwise.

These defendants deny that they have in any manner whatsoever, either monopolized, combined or conspired to monopolize, or attempted to monopolize, any portion of the food supply of the Nation; and also deny that they control artificially either the supply or the price of the foods of the Nation; but, on the contrary, these defendants allege that the business of Morris & Company has been, and is being, conducted in accordance with the laws of the land and the rules of good business ethics; that in considering the question of monopoly, the Swift, Armour, Wilson, and Cudahy interests must be considered separately, and not jointly, for each is in actual and active competition with the others and Morris is in actual and active competition with them all.

Object to be Attained

These defendants deny that they have, or ever attempted, any monopoly whatsoever in the interstate trade or commerce of live stock, meat products, or so-called substitute foods; and deny that they have any instrumentalities, facilities, or advantages by which they could build up or perfect any monopoly of meats, meat-food products, or substitutes for meats, or any other article or commodity.

Defendants aver that they have a perfect legal and moral right to deal in the so-called substitute foods or unrelated commodities, and that their dealing in such foods and commodities is sound economically and without question has been and is now of great benefit to the public.

[fol. 60] The Nature of the Business and Method by Which it is Handled

Those defendants admit that the principal business of Morris & Company, of Maine, is the slaughter of live meat animals, the dressing of the carcasses, and the distribution of the dressed meat and the sale of such meat and meat-food products to butchers, who in turn sell the same to the consumers.

These defendants admit that the large packers invented what is commonly known as the refrigerator car. By means of the refrigerator car the dressed meats can now be transported for long distance and delivered to the great consuming centers in the eastern part of this country in good condition. This is in the interest both of the producers of live meat animals and of the consumers of meats and meat-food products. These cars make it possible for the packing houses to be located near the source of production of the live meat animals, which saves shrink and freight to the producer of such live stock and relieves the necessity of shipping anything to the consuming centers excepting meats, the rest of the carcass being manufactured into by-products. In this respect the refrigerator car has been of great benefit to the country as a whole. It has developed the live-stock industry and has cheapened meats to the consumer.

This very advantageous and economical way of transacting this business requires large units, because only with a large volume could the packer afford to own refrigerator

and route cars and the branch houses necessary for the distribution of the meats and meat-food products required in the great consuming centers of this country.

After inventing the refrigerator car the large packers were required to build, own and operate their own cars, because the railroads refused to furnish such cars. These cars have been operated by the packers at a great loss and without any advantage over their competitors, because they pay the same rate on the product shipped in their own cars as that shipped in the cars of others and because the mileage rate paid to the packers for the use of their cars is fixed by the Interstate Commerce Commission.

Stockyards

The stockyard is a market place, where the live meat animals of this country are received, penned, rested, fed, watered, weighed, and sold. The stockyards of this country are absolutely essential not only to the live-stock industry but also in getting meat foods for the people. They are not only in theory but in fact public markets where all who wish to buy or sell have had and may have free access and right to trade. The present high state of efficiency in the stockyards of this country is almost entirely due to the packers. It is infinitely better that the control of these yards should be with people who are interested in the industry rather than with people who are interested only in their dividends.

The stockyards, as alleged in the bill of complaint, have always afforded to the cattle raiser the opportunity to [fol. 61] speedily dispose of his live stock for an immediate cash price. This is because of the financial strength of the packers. In the past this has been done, regardless of panics, the financial condition of the country, or the number of animals offered for sale, which demonstrates that there must be large units in the packing business. If the borrowing power of the large packers is impaired through needless agitation, improper regulation, or unwise legislation, it may be that in the future all of the live stock offered for sale will not continue to be purchased each day for cash.

As alleged in the bill — complaint, packing houses are naturally located at stockyards, because each is dependent upon the other. The stockyards furnish the raw material for the packer, and the packer furnishes a spot cash market

for the live stock offered for sale in the stockyards. Consequently, the packer is directly and vitally interested in building up the yards and the live-stock market at all points where he may have a packing house. Originally many of the smaller yards near the source of production were not efficiently or successfully conducted. This was the great underlying cause that influenced the packer to become interested in such yards.

The ownership of the capital stock of the Stockyards Company cannot possibly exercise any control or influence over the prices obtained for live stock bought and sold in the yards, for the reason the yards are public and free for everybody to bid upon stock offered for sale therein.

It is natural and proper that there should be located at the stockyards commission men skilled in valuing, handling, buying and selling of live stock and to look after the live stock intrusted to their care for sale and disposition at the yards.

The Stockyards Company very properly makes charges for services rendered, as alleged in the bill of complaint, and the Stockyards Company is entitled to fair and reasonable compensation for such services, and this regardless of the ownership of the capital stock of the company. The charges at the various yards in the past have been fair and reasonable for the services rendered.

These defendants, further answering, state that none of the Morris corporation defendants has any interest whatsoever in any of the stockyards of this country. The Morris individual defendants holding interest in the stockyards have been, and are, willing to dispose of such interests, providing a purchaser can be obtained therefor who will pay what said interests are fairly and reasonably worth and who at the same time will insure the future efficient operation of such yards.

Packing-house Sites

There has been no undue or improper tendency to "centralize" the live-stock markets of this country, and it was not on account of any such alleged "tendency" that packing houses were located at the stock yards, and vice versa, as intimated in the bill of complaint. The stockyards could not exist without packing houses, because the packers are

the principal buyers at the yards. Neither could a packing house exist without a stockyard, unless the packer should [fol. 62] buy his raw material in the country direct from the owners of the live stock, which policy, we submit, neither the producers nor the Government would favor.

These defendants deny that the stockyard companies generally own or control all of the packing-house sites at such yards; also deny that the owners of the stockyards are in a position to determine or do determine what packing companies, and how many plants, shall be established at the yards.

Further answering, these defendants say that it is to the decided advantage of the stockyards to have as many packing houses as possible located at such yards. Each additional packing plant builds up the live-stock market for the yards company, as the yards company makes its money out of yardage and feedage charges. Therefore, the greater number of head passing through the yards will necessarily increase the receipts of the stockyard company. It has always been the fixed policy of the stockyard companies to secure additional packing plants at the respective yards. It is not a fact that there has been any discrimination whatever in that regard.

On the contrary, the stockyard companies, regardless of their ownership or control, have always been anxious to get additional packing plants located at their respective stockyards.

Sites for Stockyards Banks and Cattle Loan Companies

These defendants admit that a very large amount of capital is required to finance the raising and preparing for market of live meat animals, upon which the consumers of this country depend for their meat and meat-food products. It is not practicable for the banks of the country generally to loan this money, taking chattel mortgages on the cattle as security, which is ordinarily the only security offered, because of the character of security and the distinct location of the banks therefrom. Accordingly there are a great many cattle loan companies in this country which maintain offices and representatives in the locality of the cattle given

in security for loans, and thus these cattle loan companies are in a position to keep in touch with the loans and inspect the security from time to time. The majority of these cattle loan companies have no packer interest in them whatsoever.

The mode of procedure is for the cattle loan companies to take the notes of the cattlemen, secured by chattel mortgages on the cattle, and then the cattle loan companies indorse and guarantee this paper to the banks scattered all over the country. Most of this paper goes to eastern banks. The banks take and pass this paper out to their customers, not upon the security of the mortgaged cattle, which are generally at a great distance from the banks, but upon the indorsement of the cattle loan company. For the inspection of the security and guarantee of the paper the cattle loan company gets a reasonable commission, generally the difference between the interest which the borrower pays and the interest retained by the bank buying the paper. In this way it has been possible for the live-stock men of this country to borrow the required money to prepare the live [fol. 63] stock for market, and the cattle loan company has in this way been of great benefit both to the producer and the consumer.

These defendants further state that the cattle loan companies controlled by the big packers have never required the live-stock man to market his live stock except when same is actually prepared and ready for the market. In not a single instance has the packer—controlled cattle loan companies—required prior marketing of live stock, even in case of drouths or other extremity beyond human control, unless, and except, it was in the best interest of the owner of such live stock. The packers, in fact, have had no advantage whatever through such cattle loan companies, except through the encouragement of production. The live-stock men have not to any extent been damaged by the interest of the packers in such cattle loan companies, but, on the contrary, have been greatly benefited.

It is in the interest of the live-stock men and of everybody else that these cattle loan companies and live-stock banks be located at, or near, the principal stockyards of this country.

These defendants deny that the owners of stockyard companies in which they, or any of them, have any interest,

have, at any time or place, designated how many, and which, banks or loan companies may establish themselves at the yards. But, on the contrary, there is in fact actual and active competition between the banks and cattle loan companies at all of the large stockyards of this country.

Morris & Company has no stock or other interest in any bank or cattle loan company.

Rendering Plants

In the shipment of live-meat animals to the market, naturally some of them die, either en route or after reaching the yards. There are not enough of these dead animals at any one stockyard to justify the investment, overhead, and expense incident to the operation of a rendering company. Accordingly, the Rendering Company that handles the dead animals at any one of the stockyards must and does have additional business, which is generally obtained in the way of dead animals collected from the streets of the city, under city contract. When a company has such a city contract it is enabled to handle the dead animals at the stockyards on better terms and to better advantage for the producers than otherwise could be done.

From the standpoint of health and sanitation these dead animals must be handled very expeditiously and on that account some one must be charged with the responsibility of their very prompt collection and disposition.

These defendants deny that there is any monopoly at any of the public stockyards of this country for the handling of dead animals at said yards, but state the fact to be that said animals are handled to the best possible advantage and in the interest of the owners of such animals.

Morris & Company has no stock or other interest in any rendering company.

Commission Men's Office Space

[fol. 64] It is advisable for the commission men and traders at the stockyards to have offices in or near the yards, as alleged in the bill of complaint, otherwise they could not expeditiously transact the business at the yards for the producers of this country. In the orderly and efficient handling of live stock at the yards it is necessary to allot certain pens to the commission men in order to avoid

confusion and delay. The renting of offices and the allotting of pens to commission men at the various stockyards have been done to the interest of the producers and of all concerned, and nothing is averred in the bill of complaint to the contrary. Generally the commission men and traders at the yards have a committee of their own to make these allotments of pens, as the interests of the yards and the commission men are absolutely mutual in this regard.

Terminal Railways

These defendants state that it is in the interest of the live-stock producers that these terminal railways should be owned and operated independent of any one railroad system, because otherwise the railroad company controlling such terminals would use same to its own advantage and in the interest of its shippers and against the interest of shippers on other railroads. These stockyard terminals were originally brought into existence so that all shippers would be treated alike and so that there would be no discrimination in the handling of live stock into and at such yards. It is of the greatest importance that all live stock should reach the unloading chutes and be unloaded as soon as possible, so as to be rested, fed, watered, and prepared for the early market.

While the bill of complaint does not charge the exercise of any discrimination on the part of the terminal railways at the different stockyards, it claims they have such power. These defendants state most positively that these terminal companies have not discriminated in the matter of sidings, spurs, or other accommodations which may be required by a packing house, and there has been no discrimination along this line against any packer or buyer in any manner whatsoever.

Market Papers and Journals

As stated in the bill of complaint, the cattle raiser requires "full, accurate, and unbiased reports of the demand for live stock, the prices prevailing and the character and kind of stock required," and such information is furnished by the market papers and journals specializing in intelligence of this kind. In years past the daily press printed more extensive, but still inadequate, reports than at the

present time, the increased cost of print paper and the reduction in size forcing a curtailment of these reports. The burden of increased cost of production bears more heavily on the small publisher than the large. This situation en- [fol. 65] dangers the future of these publications, and care should be taken that these market papers and journals are not required to -bandan the field altogether.

Whatever financial aid or assistance which the packers have given these publications in the past has been done in the interest of the market, and the producers got the benefits thereof. No market paper or journal could successfully falsify either prices or conditions. To do so would be to commit financial suicide, as its integrity and accuracy are the sole measures of its value to its subscribers.

These defendants have no advantage of any kind either over the producer of live stock or the purchaser of their finished products by or through the publication of market papers or journals. The fact is that both the people from whom the packers buy their raw material and the people to whom they sell their product are fully and accurately advised concerning market conditions.

These defendants deny that they, or any of them, own any interest whatever in any of the market papers or journals at any of the stockyards in this country.

Alleged Results from Control of Stockyards

These defendants deny that the control of the stockyards and of the other facilities at the yards would cause the results claimed in the bill of complaint, and with reference thereto would state:

(a) If the profits made by the stockyard company are reasonable (and there is no charge in the bill of complaint that they are unrea-onable) then it is wholly an- absolutely immaterial, both to the producer of live stock and the consumer of meat, who owns the capital stock in the stockyards so far as profits are concerned. Packer interest in stockyards does not add 1 cent to the cost of the meat to the consuming public. On the contrary, if packer control of the yards means greater efficiency and saving of cost, it is to that extent a saving to the consumer. In other words, the elimination of the packers from interest in the yards would eliminate neither the yards nor the reasonable

charges which the yards company is justified in making for its services.

(b) There is no power in a stockyard company to grant a monopoly either to banks, cattle loan institutions, rendering plants, or concerns supplying food for live stock and others, and no such monopoly has been granted or attempted in the past.

(c) The stockyard companies have no power to prevent the establishment of new packing plants at the respective yards or to hamper the growth of those in existence; but, on the contrary, it is to the direct and best interest of the stockyard company to induce the location of additional packing plants and to give such service as would encourage the growth of those in existence. The fact is that the building of additional packing plants has been encouraged by all of the yards.

(d) The present stockyard companies can not prevent the development and limit the number of new markets or centralize and restrict business to the present stockyards. The Morris interests have in the past established now markets [fol. 66] in direct competition with the other large packers. In 1921, Morris built a packing plant and stockyards at Oklahoma City, in direct competition with Swift and Armour at Fort Worth and with Cudahy and Dold at Wichita, being less than 200 miles from each point, and even to the present time Morris must buy live meat animals in the leading markets of this country to sustain and keep its Oklahoma City packing plant in operation. To illustrate: Morris & Company has purchased as high as 40,000 head of cattle in one year at the stock yards in Fort Worth, controlled by Armour and Swift. These cattle were purchased for slaughter at its packing plant in Oklahoma City, operated in active competition with the Swift and Armour plants at Fort Worth.

The South needs packer development and diversified industry, and especially in those sections where cotton can no longer be raised on account of the boll weevil. The climate and the soil both favor the raising of meat animals, and the larger packers have been developing this section both with packing plants and stockyards. If the packer should be denied the privilege of being interested in stockyards,

then this development, so much needed and desired, may be arrested and defeated.

(e) There has never been any exclusive access to information concerning receipts and sales of live stock and its disposition, either to the producer, the packer, or anyone else. This information has always been and is public and accessible to everybody alike.

The Bureau of Markets, under the Department of Agriculture, is maintained for the purpose of obtaining, and disseminating this species of information to all concerned.

Branch Houses

A branch house is primarily a market, or sales place, for the disposition of packing-house products at a distance from the packing plant. Branch houses are also frequently used for manufacturing purposes, such as the smoking of hams and bacon, and the making of sausage and other similar products; the consuming public thus gets the most wholesome product.

The branch house must have refrigeration, for meat is a very highly perishable product. Before we had refrigeration, beef was shipped to the eastern markets in box cars, when the weather was cold enough, and sold at auction on arrival. This costly, insanitary, wasteful, and extravagant method was soon discarded when the big packers invented and brought into use the refrigerator cars and the branch house.

The branch house is ordinarily located on a switch track near the business center of the city, and is managed by experienced men who know the wants of their particular community. At first the branch house was a crude affair, but the modern branch house costs from $75,000 to $300,000.

The branch house is in the interest of both the producer and consumer, because, without the distributing facilities of the big packers, of which the branch house is a part, congestion would take place at the packing plant and the packer [fol. 67] could not buy the live meat animals shipped to the yards. Consequently, it is in the interest of the producer that the packers have the proper marketing facilities, so that the packing plant will not be congested with the finished product, and so that the packer, by not being a spasmodic

buyer, can at all seasons of the year pay a fair price for the live meat animals offered for sale on the market. The branch house not only serves this purpose for the producer, but is also the source through which the butcher at all seasons of the year gets his meat and in turn is able to continually supply the consuming public.

With the large packing plants located near the source of production, as they should be (thus saving the producer shrink and freight), the branch house is an absolute essential part of the distributing system of the packer. Meat is a highly perishable product and can only be kept in good condition for a limited number of days, even with refrigeration. Not only is the refrigerator car and the branch house an essential in the distributing system of the packers, but these facilities keep down the waste of meat to a minimum, and prevent the increase in price which waste would necessarily entail.

These defendants are not advised as to the number of branch houses maintained by the defendant parent companies, as alleged in the bill of complaint, but these defendants state the fact to be that Morris established its first branch houses in the east in the year 1885, and it now has 186 branch houses, with 2,850 employees.

These defendants further state that the distributing system of the larger packers, including refrigerator cars and branch houses, does not give to them any monopoly in the sale of meats in the great consuming centers, or anywhere else. To illustrate the situation in that regard it may be stated that in New York City, in addition to the defendants, there are more than 75 wholesale dealers and slaughterers, and in Boston, besides the defendants, there are 13 large wholesale dealers and 15 houses that buy from local slaughterers. This is characteristic of all the large cities in the great consuming section along the Atlantic seaboard.

The meat sold through the branch houses must bear the expense of shipment from the packing plant to the branch house, in many instances being a great distance and a large expense. This meat comes in competition with the meat of numberless local slaughterers in all of the cities of this country, which later meat has no expense whatever for transportation and is also free of the expense incident to Federal inspection. Consequently, in the matter of competition the meat of the big packers sold through branch

houses is at a decided disadvantage. The branch houses are maintained simply as a matter of necessity and because no better distributing system has even been suggested or adopted for the transportation of meat from the large packing-house centers, which should be near the source of production, to the great consuming centers, which are largely along the Atlantic seaboard.

These defendants further state that perishable product like meat can not be handled through some common freight house, like farming implements, clothing, boots, and shoes, or other staple articles, which do not have to be sold quickly in order to prevent deterioration or complete loss.

[fol. 68] Route Cars

As stated in the bill of complaint, route cars supplement the branch houses and serve the purpose of reaching the small communities where the trade is not sufficiently large to justify an investment in a branch house.

The route car does more than this, it brings to these smaller communities the Federal inspected, sanitary, and finely prepared products of the modern packing house. Through the efficiency of the large packers and the utilization by them of all by-products, these meats and meat food products can be supplied to these small distant communities at less cost than they are supplied through the local butcher. At the same time the Department of Agriculture has determined and reported "that farmers receive smaller relative returns from cattle marketed locally than from those that are shipped to centralized markets."

These defendants are not advised as to the number of route cars operated by the parent companies or the percentage which that number bears to the total number operated in the packing industry. These defendants state that Morris & Company operates 265 car routes in this country, reaching 5,074 towns, and the business done from these route cars comes in direct and active competition not only with the products of the large packers, but also with the local butchers and slaughterers, many of whom are not Federal inspected and have no expense of shipment whatever. The percentage of route cars operated by the five large packers as compared with the number of route cars operated by the packing industry as a whole, does not begin to describe the amount of competition which the business done

from these route cars comes in contact with. If these route cars were not in existence the strong probability is that the local butchers and slaughterers would increase the price of meat to the consuming public. These defendants maintain that these route cars are now operated, not only within the law and without any undue or improper advantage to the packers, but they are in fact operated to the great benefit and advantage of the consuming public in the towns and communities reached by them.

Auto Trucks

These defendants do not maintain any auto trucks that serve as route cars, but insist that the consuming public is entitled to the most efficient and best means of distribution of meats and meat-food products that can be devised.

Cold-storage Warehouses

The bill of complaint alleges that the cold-storage warehouse enables the packer to extend the volume of his business. Anything that extends volume in the meat-packing business is in the interest of the public generally, both producer and consumer, because a big volume enables the packer to utilize the by-products to the fullest possible ex- [fol. 69] tent. That is why the big packer has so many departments. That is why the big packer has a large force of chemists and highly trained specialists who are constantly endeavoring to produce more and more by-products from the offal, the effect of which is to bring down the price of meats for human consumption. That is one important reason why this country must continue to have big units in the packing industry.

Generally speaking, the cold-storage warehouse enables full production in seasons of plenty to be carried over to seasons of scarcity; thus stabilizing the prices for the producer in seasons of plenty and at the same time making the prices lower to the consumer in seasons of scarcity.

The chief function of the cold-storage warehouse in the meat-packing business is to preserve the surplus meats until they can be advantageously marketed, which is in the interest of both the producer and the consumer. At all times there are extraordinary runs of cattle, hogs or sheep at the various yards. Sometimes this is due to usual and normal

causes, such as the end of the grass season for cattle, or in the fall for hogs; and at other times it is due to something unusual and out of the ordinary, as a drought in the Southwest or a cholera scare among the hog feeders. Under such circumstances if there were no cold storage warehouses to take care of this temporary oversupply this live stock could not be marketed and would represent a clean waste in the food supply of the Nation, which in turn would enhance the price of meats to the consumer, not to mention the loss to the producer.

If it had not been for the cold-storage warehouses along the Atlantic seaboard our armies and the armies of our associates could not have been fed with American meat during the war, as these warehouses enabled us to store the meats at places reasonably accessible to seaboard while waiting for the ships.

Morris & Company owns but one cold-storage warehouse, which is located in Chicago. This warehouse has a capacity of about 50,000,000 pounds, a large part of which is used for meats in process of curing. It is necessary for the company to store almost that amount in outside public warehouses, for which Morris & Company pays the regular published rates regulated by the various State utility commissions where the different warehouses may be located. Morris & Company has never had, or exercised, any control over public warehouses.

These defendants deny that they have any possible advantage over their competitors through the cold-storage warehouse; also deny that the cold-storage warehouse has ever been used by them, or any of them, as a means to control the price of meats and so-called substitute foods.

The Parent Companies' Acquisition of Above-described Facilities and Their Purpose in Doing So

These defendants deny that they, or any of them, purchased or acquired any interest whatsoever in stockyards [fol. 70] or the facilities pertaining thereto, the stock yards terminal railways or market papers in order to repress and discourage the development of other packers and slaughterhouses or to control the shipments of meat to the various markets.

These defendants state that there are more packers in competition with them than ever before in the history of the

industry; that there are more than 300 meat packers doing an interstate business under Federal inspection, and there are more than 1,000 local slaughterers doing an intrastate business, all in keen and active competition with these defendants.

These defendants deny that they, or any of them, ever purchased or acquired any interest whatever in stockyards, terminal facilities, or market papers by concert of action and pursuant to a common understanding with the other defendants in this case, or with any other person or persons; and these defendants have never acquiesced in the acquisition of interest in or control over stockyards by any of the other defendants.

These defendants deny that, in pursuance of a common purpose, plan, and desire, outside investors and packers have gradually been forced out as dominating factors, both in the ownership and management of the most of the important stockyards, and have been replaced by the parent companies or their representatives. The fact is that none of the Morris corporations have any capital stock or other interest whatsoever in any stockyard in this country. The largest stockyard in the country—Chicago—is not controlled by the packers, but, on the contrary, only one individual packer has any interest therein, and that but 19 per cent. More than two-thirds of the capital stock of the second largest stockyard in the country—Kansas City—is owned by people wholly unconnected with the packing industry, and the capital stock of this company is dealt in very extensively on the stock exchange, and any person is privileged to buy a substantial interest therein. Large blocks of the capital stock of the Omaha yards, the third largest stockyard in this country, are owned by people wholly unconnected with the packing industry. More than one-third of the capital stock of the East St. Louis yards, the fourth in size, is owned by people who are not connected with the packing industry. But the smaller yards, near the source of production, like the Denver, Fort Worth, Oklahoma City, and Wichita yards, which can scarcely support two packers, and which render the great service to the producers, relieving them of both freight and shrink, are not so attractive to the investing public, and these are the yards which have been built up and are controlled by the packers.

These defendants further state that the interests acquired

by the packers in the various stockyards of this country were generally acquired through necessity and in order that such yards might be built up and maintained efficiently, and this packer interest in these yards has resulted generally in the extension and building up of the market.

These defendants deny that they, or any of them, ever acquired any interest in any stockyard, stockyard terminal, [fol. 71] or stockyard paper through any of the means or methods set out and described in the bill of complaint.

These defendants deny that the Morris parent company, charged in the bill of complaint, has granted any exclusive privileges, such as the right to purchase dead animals, the right to furnish supplies and facilities, and the location of cattle banks and cattle loan companies, to concerns and corporations in which these defendants, or any of them, were interested; also deny that they employed the powers and privileges more specifically set forth and discussed in the bill of complaint under the heading "Nature of the business and method by which it is conducted."

These defendants expressly and distinctly deny that they, or any of them, have done any of the things alleged in the bill of complaint for the purpose, or with the effect, of discouraging and suppressing the establishment of packing establishments or dwarfing the growth of any packing company whatsoever.

These defendants further deny that they, or any of them, have attempted to monopolize the meat industry of the country or to artificially control the ultimate price which the consumer pays for meat or meat products.

Contracts in Restraint of Trade

Defendants expressly and distinctly deny each and every allegation and averment in the bill of complaint under this heading.

Further answering this charge of an agreement as to percentage of purchase, these defendants deny that they, or any of them, have any agreement or understanding whatsoever with any person, firm, or corporation concerning or affecting its purchase of live stock, and, in that connection, state most positively that the business of Morris & Company is regulated and controlled entirely and absolutely by the law of supply and demand, and that its purchases of live stock are not regulated or controlled, to any extent whatever, by

the purchases of Swift & Company, Armour & Company, Wilson & Company, the Cudahy Packing Company, or any or either of them, or of any other person, firm, or corporation.

These defendants state that there is not the uniformity of purchase between the parent companies that is intimated in the bill of complaint, but an approximate uniformity of purchase between these companies is of no particular significance, as these businesses have been many years in developing, and each company now has its regular organization, its ordinary and usual trade, its plant capacity, and distributing system. Moreover, there has been a very determined fight for several years from certain quarters to hold these companies to their present volume and not permit them to grow or extend, if not to disintegrate them altogether. All of this would tend to bring about even a greater uniformity of purchase than the law of general average.

The uniformity appears closer than it actually is because of the tremendous volume incident to the packing business. In the figures of percentage the difference of 1 per cent to [fol. 72] the average mind would not appear great, and yet that 1 per cent may represent several hundred thousand head of cattle. The difference of 1 per cent in the Morris buy between the years 1915 and 1917, which is conceded by the Government, represents 76,000 cattle, which is approximately 10 weeks' kill in Chicago or 3 weeks' kill at all of the Morris plants.

Further answering, these defendants state that there is much more uniformity of purchase by the leading interests in any stabilized basic industry in this country having competition than there is in the packing industry, and that this alleged uniformity of purchase in the packing industry, whatever uniformity there may be, is due to healthy conditions and sound economic laws, except that brought about by forces and influences outside of the packing industry itself.

This identical charge of uniformity of purchase was made by the Government in a criminal case instituted by the Government in Chicago against certain of the officers of three of the defendant parent companies, and after hearing the testimony for several months, this precise question being gone into very fully, the jury, in March, 1912, returned a verdict in favor of the defendants, upon the testimony

of the Government alone. The judgment based upon that verdict necessarily means that there was no undue uniformity of purchase by the packers and is, in fact, an adjudication on that point.

This Government suit of 1912 was on the theory that three of the parent companies in this case maintained a certain percentage as to buy of live stock, while this present suit is against five parent companies and their officers, and yet there is no allegation in the bill of complaint as to how, when, or why the Government changed its position from three to five or when the two additional parent companies became parties to the present alleged agreement, or how, or to what extent, the two additional companies have affected the alleged percentage.

These defendants further state that, during the war, the Government ordered and directed the packers of the country generally, including the defendants, to maintain their respective volumes of business. The Government can not consistently order a certain thing done and then afterwards complain of its being done. Consequently, the allegations in the bill of complaint do not set up any facts constituting a violation of any law on this point within three years next preceding the filing of the bill of complaint.

Control of Substitute Foods

The statement in the bill of complaint that defendants had eliminated competition in meat products is wholly without foundation in fact, as is also the statement that the packers commenced the handling of foods and products ordinarily handled by wholesale grocers and produce dealers in order to keep the price of meats from advancing out of proportion to these other foods.

The fact is, that Morris & Company largely confined its activities to the production and handling of meat food products until the latter part of 1917. At that time the cost of live meat animals, labor, taxes, supplies, and everything [fol. 73] entering into meat had advanced tremendously. The irregular receipts of cattle, sheep, and hogs due to shortage of live stock caused irregular markets. There are always slack seasons in the sale of the meats. Morris & Company had fixed an overhead for the maintenance of its branch houses and the distributing system. During the war the meat that was furnished to our Government and the

Governments of our associates did not pass through the branch houses, and as the Government discouraged the eating of meat by the civilian population in order that the armies and navies might be properly fed, the employees in the branch houses were not fully engaged and had plenty of time to handle additional lines. In order to meet these conditions and to keep down the expense of this distributing system, Morris & Company began the handling of canned fruits and vegetables. The company had the branch houses, the sales organization, and delivery equipment, and expenses were going on whether the meat business was active or quiet. It was, therefore, decided that it was good business to keep all of these men and the equipment busy the year around, and in order to do so canned fruits and vegetables were added to the Morris lines.

In addition to the utilization of the entire organization to its full capacity, these added lines enabled Morris & Company to make more frequent turnovers, smaller sales to the retailer, who ordered more frequently, reduced his investment in stock and gave the consumer a better product. Morris & Company was often encouraged by retailers to add to its line as they appreciated the service and could save time in both purchasing and delivery.

In the handling of groceries Morris & Company had no advantage whatever in freight rates over its competitors and the only advantage which the packer had in handling groceries and so-called unrelated lines was the advantage due to his efficiency, and it is perfectly legitimate and proper that the consuming public should receive the benefit of such legitimate advantage.

These defendants deny that Morris & Company fixed prices so low as to gradually eliminate competition and to exterminate the produce dealer and wholesale grocer. It is an admitted fact that the number of wholesale grocers and the volume of business done by them since Morris & Company entered this field in the latter part of 1917 has increased more than 10 per cent. This conclusively demonstrates that, instead of eliminating competition, or even injuring the business, the competition of the packers has stimulated and been beneficial to the business.

The entire business done by Morris & Company in the so-called unrelated lines, which consisted almost entirely of canned fruits and vegetables, amounted to less than 2 per

cent of the total annual sales of the company. The total business done by all of the packers in lines unrelated to meats amounts to less than 3 per cent of the entire volume transacted by the wholesale grocers and packers.

In view of the substantial growth of the business of the wholesale grocers during the last few years, the statement in the bill of complaint to the effect that, unless prevented [fol. 74] by a decree of this court, the defendants will, within the compass of a few years, control the quality and price of each article of food found on the American table, is nothing short of the ridiculous. On the contrary, these defendants insist that it is in the best interest of the consuming public that it should get the benefit of the distributing system and added competition of the packers in these so-called unrelated lines. To eliminate the packers from this field would merely mean to cut down competition to that extent, to which the consuming public is entitled. The handling of groceries and foods other than meats by the packers has resulted in a better product and a saving of foods through wastage and destruction. While the wholesale grocer has his place in the economic scheme of this country, still it would be to the interest of the people generally if the efficient competition of the packers would force the wholesale grocer to revise his business methods and cut down his costs.

All of the profits made by Morris & Company in the handling of these so-called unrelated lines finally went into the packing house profits and, to that extent, enabled the packer to sell meat at a lower price. Consequently, the elimination of the packers from these so-called unrelated lines would naturally result either in lower prices for the live stock or higher prices for meats.

Financial Growth, Present Net Worth, and Volume of Business

These defendants are not advised concerning the alleged growth, profits, sales, or net worth of Swift, Armour, Wilson, and Cudahy between the years 1904 and 1919, but these defendants do state that the total annual profits of Morris & Company, from every source whatsoever, for this period of 16 years was but 8.41 per cent on the capital and surplus

invested. Out of these profits dividends have been paid to the stockholders representing but 1.71 per cent on the capital invested. The balance of profits, to wit, 6.70 per cent on the capital invested, has been added to surplus.

A table showing the capital stock, the surplus, and the profits of, and the dividends paid by, Morris & Company for each of the years 1904 to 1919, both inclusive, is as follows:

Year	Capital	Surplus	Profits	Dividend paid
1904	$3,000,000.00	$12,663,983.17	$1,656,599.39	$240,000.00
1905	3,000,000.00	14,080,582.56	2,023,643.80	240,000.00
1906	3,000,000.00	15,864,226.26	1,796,618.65	240,000.00
1907	3,000,000.00	17,420,844.91	2,251,673.39	1,800,000.00
1908	3,000,000.00	17,872,518.30	2,650,389.35	315,000.00
1909	3,000,000.00	20,207,907.65	2,069,578.36	450,000.00
1910	3,000,000.00	21,827,486.01	746,194.96	435,000.00
1911	3,000,000.00	22,138,680.97	1,034,851.64	180,000.00
1912	3,000,000.00	22,993,532.61	1,812,653.49	180,000.00
1913	3,000,000.00	24,626,186.10	1,916,996.94	360,000.00
1914	3,000,000.00	26,183,183.04	2,205,672.69	450,000.00
1915	3,000,000.00	27,838,855.73	2,321,414.78	750,000.00
1916	3,000,000.00	29,510,270.51	3,632,212.90	1,000,000.00
1917	3,000,000.00	32,142,483.41	5,301,071.47	150,000.00
1918	3,000,000.00	37,293,554.88	4,217,858.84	300,000.00
1919	3,000,000.00	41,211,413.72	703,641.00	300,000.00

[fol. 75] The profit on each dollar of sales by Morris & Company for the years 1910 to 1919, both inclusive, is as follows:

Year	Profit on each dollar of sales
1910	$0.0061
1911	.0086
1912	.0136
1913	.0117
1914	.0139
1915	.0129
1916	.0170
1917	.0181
1918	.0106
1919	.0016

These defendants are in no way connected with Swift, Armour, Wilson, or Cudahy and are not in a position to state as to their profits, but these defendants are advised and verily believe that the profits made by the five big packers have been substantially less than the profits made by any other large basic industry in this country.

These defendants deny that the Government has not ascertained all of the profits made by the defendants and state the fact to be that departments and representatives of the Government have been through their books and records

very thoroughly and for many years, and are familiar therewith, and, under these circumstances, these defendants state that the petitioner is not justified in alleging that there are profits which have not been ascertained.

Number of Controlled Companies

Unfortunately, the allegations in the bill of complaint under this heading are vague, indefinite and uncertain. These defendants are not advised as to the number of corporations in which the Swift, Armour, Wilson, and Cudahy companies are interested; nor are these defendants advised as to what is included in the word "families" under the averment in this regard. These defendants do say that the Morris organization is interested, comparatively, in very few corporations and if the petitioner would specifically allege or set out the names of the corporations in which it is claimed that any of the Morris defendants are interested, then these defendants would answer such an allegation with certainty and precision.

These defendants are absolutely certain, however, that the Morris organization has no greater number of corporations than is ordinarily identified with a business having the volume and magnitude of Morris & Company. The corporations which Morris & Company do own or control were acquired, and are held and controlled, legally and not in violation of any law.

[fol. 76] Extent of Industrial Control in the Substitute Foods and Unrelated Commodities

It would not be an enormous undertaking to determine the degree of control exercised by the defendants in all of the various activities mentioned in the bill of complaint, and there is positively no truth in the statement that, if the growth is permitted to continue unchecked, it will be complete within a few years. The fact is, that it is now within the complete power of the petitioner to ascertain and determine, if that has not already been done, just to what extent Morris & Company is engaged in any of these unrelated lines.

Of course, these defendants are not familiar with the alleged growth of the business of Armour & Company in these unrelated lines, as alleged in the bill of complaint.

Morris & Company disclaims any purpose whatever on its part to secure control of the market for so-called meat substitute foods, or any portion thereof.

The parent companies do not control either the output or the price of products marketed through their distributing facilities, because they must pay exactly the same freight rate on goods shipped through these facilities as if they were shipped otherwise.

Individual Defendants

The individual defendants are all members of the board of directors of Morris & Company, of Maine; Edward Morris is president, Nelson Morris is chairman of the board, L. H. Heymann is vice-president, C. M. Macfarlane is vice president and treasurer, and H. A. Timmins is secretary and assistant treasurer of Morris & Company of Maine.

The defendant, Nelson Morris, was not on the payroll of Morris & Company between March 1, 1918, and June 11, 1919, and took no part whatever in the affairs of the company during that time.

There is no foundation in fact for the statements in the bill of complaint that there is any effort or attempt on the part of these individual defendants, either for themselves, or for others, to control the meat products or so-called substitute foods in the United States.

Corporation Defendants

The history of the growth and development of the Morris organization is merely the recital of thrift, economy, efficiency, strict personal attention to business and the leaving of the earnings in the business to accumulate; in another form, it is the tale of interest compounded. This organization has been three generations in the making. Nelson Morris, grandfather of the present heads of the business, was the original founder. More than 60 years ago he started in business as a sheep driver in the Chicago yards with a total capital of 50 cents. He became the largest feeder of cattle in the world, feeding as high as 60,000 head at one time, making big money in selling his cattle to the packers, and the money so made went into the packing business. The [fol. 77] capital stock of Morris & Company has always been closely held, and its legitimate growth, with increasing values in this country, can thus be easily understood.

The original corporate organization was the Fairbank Canning Company, but the business was in fact conducted as a partnership by Nelson Morris and his sons under the firm name of Nelson Morris & Company until the present parent company, Morris & Company, of Maine, was organized.

It can be asserted with complete confidence that even during the period of business development in this new country of unparalled natural resources and advantages, that the packing industry was far above the average in business morals, and that the industry continues to be conducted with honesty of purpose and scrupulous regard for the laws of the country and the equities of the producer and consumer.

There is a strong disposition in certain quarters of this country to have the Government interfere with private business by the creation of bureaus to control and run the business, which necessarily mean inefficiency, politics, and added cost to the consuming public. This policy in its developed state would lead to the paternalism and finally Government operation, which would mean the destruction of private initiative and personal ambition, which has been the genius of American business.

In this country of shifting extremes the preservation of equal opportunity to all American youth, such as that possessed by the founder of the Morris organization, is of vastly more importance than everything else involved in this litigation.

These defendants state that Morris & Company, organized under the laws of the State of Maine on October 16, 1903, with a capital stock of three million dollars ($3,000,000), is the company designated in the bill of complaint as the parent company in the Morris group, and said company has its principal place of business in the city of Chicago, Ill., and owns and operates a packing house in said city and also in the cities of East St. Louis, Ill.; St. Joseph, Mo.; Kansas City, Kans.; Omaha, Nebr.; and Oklahoma City, Okla. Its principal business is the purchase and slaughter of live meat animals and the sale of the finished products thereof; the said company, through its subsidiaries, maintaining selling branches in the principal cities of the United States.

The Morris subsidiary defendants mentioned in said bill of complaint are as follows:

The Morris Packing Company was organized under the laws of the State of Maine on September 28, 1912, with a capital stock of twenty-five thousand dollars ($25,000) and conducts branch houses at Little Rock and Helena, in the State of Arkansas, selling Morris products, all of the capital stock of said company being owned by Morris & Company, of Maine.

Morris & Company, the New Jersey corporation, was organized under the laws of New Jersey on December 27, 1902, and has a capital stock of one hundred thousand dollars ($100,000) and operates the selling branches for the Maine corporation in the United States, with the exception of those branches in the States of Texas, Louisiana, Penn- [fol. 78] sylvania, Maine, and Arkansas, all of the capital stock of said company being owned by Morris & Company, of Maine.

Morris & Company, the Louisiana corporation, was organized under the laws of the State of Louisiana on October 11, 1910, with a capital stock of fifty thousand dollars ($50,000), and conducts the Morris selling branches in the States of Louisiana and Texas, all of the capital stock of said company being owned by Morris & Company, of Maine.

Morris & Company, the Pennsylvania corporation, was organized under the laws of the State of Pennsylvania, on October 6, 1910, with a capital stock of fifty thousand dollars ($50,000) and operates the Morris selling branches in the State of Pennsylvania, all of the stock of said company being owned by Morris & Company, of Maine.

Joseph Stern & Sons (Inc.) was incorporated under the laws of the State of New York in the spring of 1910, and has a present capital stock of two million dollars ($2,000,000) and now operates a meat packing plant in the city of New York, all of the capital stock being held by Morris & Company, of Maine.

The Brooklyn Beef & Provision Company was incorporated under the laws of the State of New York on September 30, 1912, with a capital stock of five thousand dollars ($5,000) and merely operates a branch house in the city of Brooklyn, N. Y., selling the Morris products, all of the capital stock of said company being owned by Morris & Company, of Maine.

The Condit Beef & Provision Company is a corporation incorporated under the laws of the State of New Jersey in

July, 1909, with a capital stock of five thousand dollars ($5,000) and merely operates a branch house in East Orange, N. J., selling the Morris products, all of the capital stock being held by Morris & Company, of Maine.

The Corwin-Wilde Company was incorporated under the laws of the State of Massachusetts on March 29, 1893, with a capital stock of fifty thousand dollars ($50,000) and merely operates a branch house in the city of Boston, Mass., selling the Morris products, all of the stock being held by Morris & Company, of Maine.

Donnelly & Company (Inc.) was incorporated under the laws of the State of Massachusetts in December, 1912, with a capital stock of fifty thousand dollars ($50,000) and operates a branch house in the city of Boston, Mass., selling the Morris products, all of the capital stock of said company being held by Morris & Company, of Maine.

The National Hotel Supply Company was incorporated under the laws of the State of Illinois on March 19, 1901, with a capital stock of five thousand dollars ($5,000) and operates certain branch houses in the cities of New York and Philadelphia, selling the Morris products, all of the stock of said company being held by Morris & Company, of Maine.

Chamberlain & Company (Inc.) was incorporated under the laws of the State of Massachusetts on February 27, 1907, and has a present capital stock of two hundred thousand dollars ($200,000) and operates certain manufacturing and selling branches in the city of Boston, Mass., one thousand three hundred and thirty-four (1,334) shares [fol. 79] of the capital stock of said company being owned by Morris & Company, of Maine, the rest of said capital stock being owned by parties wholly unconnected with the Morris organization.

J. M. Wilson & Company was incorporated under the laws of the State of Massachusetts on December 23, 1915, with a capital stock of twelve thousand dollars ($12,000), and this company merely operates a wholesale meat market in Dover, N. H., Morris & Company, of Maine, owning capital stock of the par value of nine thousand dollars ($9,000), and the rest of the capital stock of said company being owned by parties wholly unconnected with the Morris organization.

The Middletown Beef & Provision Company was incorporated under the laws of the State of Massachusetts on January 7, 1914, with a capital stock of twelve thousand dollars ($12,000) and merely operates a wholesale meat market in Middletown, Conn., Morris & Company, of Maine, owning capital stock of the par value of eight thousand dollars ($8,000), the rest of the capital stock being owned by people wholly unconnected with the Morris organization.

Glenn & Anderson was incorporated under the laws of the State of Illinois on December 14, 1905, with an authorized capital stock of ten thousand dollars ($10,000), of which amount stock of the par value of eight thousand seven hundred fifty dollars ($8,750), has been issued, which company operates a wholesale meat market in the city of Chicago, Ill., Morris & Company, of Maine, owning forty-four and one-fourth (44¼) shares of said capital stock, the rest owned by persons not connected with the Morris organization.

It is not the fact, as alleged in the bill of complaint, that only those subsidiaries which are substantially 100 per cent parent company owned and which are engaged either in slaughtering, packing, or the selling of meats have been made parties defendant. On the contrary, it will be observed that the interest of Morris & Company in several of the above corporations does not even approach 100 per cent.

Defendants deny that the Western Meat Company, Oakland Meat & Packing Company, and the Nevada Packing Company are subsidiaries of Morris & Company.

Some Pertinent Facts and Suggestions in Connection with the Packing Industry

These defendants feel justified in this honorable court of equity in calling attention to some of the pertinent facts involved in this litigation and to some of the problems and difficulties which they encounter in endeavoring to do equity to all with whom they come in contact, and that means the whole population of the United States, for they deal in a necessity of life—food.

Equity demands that the producer of live stock be paid a fair price for his animals. Equity also demands that the consumer be served with the packers' finished product at the lowest possible cost. Equity, however, in the view of

the stock raiser means high prices for his cattle, while equity to the public means cheap meat on the table. It is practically [fol. 80] impossible to please both, for there can not be cheap meat on the table of the consumer when the producer receives high prices for the live meat animal.

Between this Scylla and Charybdis the packing industry in the past has been tossed in all directions by angry winds, sometimes blowing from the ranges, sometimes from the combined kitchens of houswives, storm tossed themselves by the mounting waves of the cost of living, and sometimes from the cavernous mouths of politicians whose interest in the matter is distinctly less honest than that of the producer and consumer. Thus the packer has suffered from agitation and misrepresentation; he has been a tempting target for time-serving aspirants for public favor and he has furnished campaign shibboleths. While equity has been demanded of the packer, and to the best of his ability he has rendered it to all, still equity has seldom been conceded to him.

The packing business is so intimately interwoven in the daily existence of every man, woman, and child in the Nation, so identified with their welfare and health, that it is extremely sensitive to criticism, and doubly so because it deals in a highly perishable product. These attacks cause not only moral but material damage.

The packing industry can not justly be blamed for the present high cost of living, because it gets less than 2 per cent profit out of its total sales (representing approximately one-fourth of 1 cent per pound of dressed meat), while the producer gets 85 per cent, and the balance goes to labor, freight, and other expenses. In the last few years packing-house labor has advanced more than 150 per cent and everything that goes into meat has advanced in proportion; and yet meat has not advanced in comparison with other necessities, and within the last six months meat at wholesale has declined 35 per cent.

We submit, in all candor, that we have reached the point where equity must be done to this vital industry, as well as to the producer and the consumer, because its future very closely affects the welfare and the happiness of all the people. It can only stand so much strain. It must not be torn down through prejudice or passion or even a misunder-

standing of the great facts which point to the eternal justice of this controversy.

The large packers are perhaps the largest borrowers of money of any industry in the world, because large sums are required to buy for cash the live meat animals offered daily for sale in the stockyards. The large packers are expected to "clean up" the yards every night. It also takes large sums of money to carry the stocks, transport the meat to and distribute them in the great consuming centers at a distance from the packing houses, and to make a market for American meats in foreign countries. This export trade is in the interest both of the American live-stock producer and of American labor. If the borrowing power of the packer is destroyed, this complex industry will be in a worse mess than the railroads; production will go down and the price of meats will necessarily go up. It is easier to tear down than to build up, as the world is now learning in this period of [fol. 81] reconstruction.

It is but just and proper that this honorable court should know the great and controlling facts underlying this industry and the difficult and delicate problems with which it is constantly confronted. The packer is in the nature of a buffer between the producer and the consumer. He is the manufacturer and distributor of meats and meat-food products for the people. If he does his work efficiently and at a reasonable cost, if the toll he exacts for the manufacture and distribution is fair and reasonable, then he performs a great and vital work for the people generally, and the machinery and efficiency with which this work is done should never be destroyed or impaired. It is just as important that this vital industry should be treated fairly and justly by the public as that the public be treated fairly and justly by this industry.

These defendants have never attempted or desired any monopoly in foods. They have never taken a position of defiance to the Government. On the contrary, they have honestly tried to observe the laws governing their business, not only in letter but in spirit as well. They desire to cooperate with the producer and to treat the consumer fairly. They want to deserve the confidence of all the people. The present efficiency and marketing system of the packing industry should be preserved to the people for all future time,

but this industry can not survive constant agitation and criticism.

These defendants stand ready and willing to meet the views of the Government along fair lines that would tend to bring about a better and more equitable understanding between this industry and the public, to the end that the present efficiency and lasting benefits of this great industry may be preserved and perpetuated for the American people.

The Prayer

These defendants say that the bill of complaint does not state a good cause of action and does not aver facts which would entitle the petitioner to any relief in a court of equity.

Further answering, these defendants deny that the petitioner is entitled to the relief, or any part thereof, in the said bill of complaint demanded, and pray the same advantage of this answer as if they had pleaded or demurred to the said bill of complaint; and pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Morris & Company (Me.), Morris Packing Company (Me.), Morris & Company (N. J.), Morris & Company, Ltd. (La.), Morris & Company (Pa.), Joseph Stern & Sons, Inc. (N. Y.), Brooklyn Beef & Provision Company, Condit Beef & Provision Company, Corwin-Wilde Company, Chamberlain & Company, Inc., Donnelly & Company, Inc., National Hotel Supply Company, J. M. Wilson & Company, Middletown Beef & Provision Company, Glenn & Anderson Company, Edward Morris, Nelson Morris, L. H. Heymann, C. M. Macfarlane, H. A. Timmins, Defendants, by M. W. Borders, Solicitor for said Defendants.

[fol. 82] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF THE WILSON DEFENDANTS—Filed February 27, 1920

The Joint and Several Answers of the Following-named Defendants to the Bill of Complaint Filed in This Cause Who Are Designated in said Bill of Complaint as Wilson Defendants

Corporation defendant named as parent company:

	Organized under laws of—
Wilson & Co. (Inc.)	New York.

Corporation defendants named as subsidiaries of the parent company:

Wilson & Co.	New Jersey.
Wilson & Co. (Inc.), of California	Nevada
Wilson & Co. (Inc.), of Louisiana	Louisiana.
Wilson & Co. (Inc.), of Oklahoma	Oklahoma.
South Dakota Provision Company	South Dakota.
Gotham Hotel Supply Company (Inc.)	New York.
Standard Beef Company	New York.
Stiefel O'Mara Company (Inc.)	New York.
Drexel Packing Co.	Illinois.
Albert Lea Packing Company (Inc.)	Virginia.
Mississippi Packing Company (Inc.)	Virginia.
Morton-Gregson Company	Delaware.
Paul O. Reymann Company	West Virginia.
Standard Provision Company	New Jersey.
Central Products Corporation	Virginia.

[fol. 83]

Individuals named as defendants because of their connection as directors, officers, and employees of Wilson & Co. (Inc.), defendant parent company, and its subsidiary corporation defendants above named:

Thomas E. Wilson.	George D. Hopkins.
Arthur Lowenstein.	Adolph E. Petersen.
Jacob Moog.	George H. Cowan.
Vonce De Leon Skipworth.	William C. Buethe.
Arthur L. Smith.	Carl F. Burrell.
James A. Hamilton.	James C. Good.

These defendants, jointly and severally for answer to the bill of complaint filed in this cause, or to so much thereof as these defendants are advised is material or necessary for them, or any of them, to make answer unto, say:

First: These defendants, for whom answer is herein made, for the limited purposes of this case only, admit that Wilson & Co. (Inc.), the corporation referred to in said bill of complaint as the parent company, is either directly or indirectly, or through subsidiaries, engaged in interstate and foreign commerce, but deny that any of the following acts constitute either interstate or foreign commerce as alleged in said bill of complaint, viz:

(a) The purchase and slaughter of live stock.

(b) The preparation and manufacture of dressed meat and by-products of the slaughtered live stock.

(c) The curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal.

(d) The production and sale of nonedible by-products and of articles in the manufacture of which those nonedible products are largely used.

(e) The manufacture, canning, or otherwise preparing for the market, sale, and distribution of certain food supplies other than meats.

And these defendants, for whom answer is herein made, severally deny that Wilson & Co. (Inc.), or any of its sub-

sidiaries or any of the individuals named as Wilson defendants in said bill of complaint, are engaged in or are a party to any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations, or are attempting to increase and extend any monopoly therein of the products and commodities referred to in said bill of complaint, or to artificially control the supply and prices of the food supply of the Nation, or that such defendants acting by and through their principal officers, or otherwise, have come to dominate, control, and monopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities referred to in said bill of complaint, or that any of said defendants have created or obtained any monopoly in interstate trade or commerce in live stock, meat products, and substitute foods, as charged in the bill of complaint, or that there has been or is in exist- [fol. 84] ence, as charged in the bill of complaint, any contract, combination, or conspiracy in restraint of trade or commerce between the several States, wherein said Wilson defendants or any of them are in any way concerned or a party or parties, but these defendants herein named, and each of them, aver that no such state of facts exists as charged in said bill of complaint as related to said Wilson defendants or any of them.

And these defendants, and each of them, further deny that the said defendant parent company and its subsidiary companies who are defendants herein, either by themselves or in concert or combination with any or all of the other defendants named in the bill of complaint, have created or obtained any monopoly in interstate trade or commerce in live stock, meat products, and substitute foods, as charged in said bill of complaint, and deny that any unlawful monopoly by the defendants named in the said bill of complaint exists, as is charged therein.

Stockyards and Stockyard Terminal Railroads

Second. These defendants, for whom answer is herein made, further severally say that neither Wilson & Co. (Inc.), defendant parent company, or any of its subsidiaries, own or control, directly or indirectly, any interest in the form

of stock ownership or otherwise in any corporation, firm, or association now owning, controlling, or operating any public stockyard market company, stockyard terminal railroad company, or market newspaper, doing business in the United States, of the class and character referred to in said bill of complaint.

These defendants further answering, aver that notwithstanding that the said Wilson & Co. (Inc.), or any of its subsidiaries, do not own or control, directly or indirectly, any interest in any such companies, there has never been any discrimination against said defendant companies, or any interference with their right to go upon the premises of any of the said stockyard companies and purchase live stock or transact any other business thereon; that neither they, or any of them, nor any other person, firm, or corporation, so far as they, or either of them, are informed, have ever been denied the right to secure desirable packing house sites in or near any such stockyards; that said stockyards are open to any person, firm, or corporation in the United States who desires to sell live stock thereon, and they are open to any person, firm, or corporation in the United States who desires to go thereon and bid for the purchase of any live stock offered for sale in said stockyard; that to the best of their knowledge and belief, the ownership of stock in any such stockyard by any of the defendants owning any such stock has not, and does not, exercise any control over the prices for which live stock are bought or sold at any of said stockyards, and that ownership or control of any stock in any such stockyards does not give the owner thereof any advantage in the purchase or sale of live stock at any of such stockyards not possessed and enjoyed by any other person transacting business thereat.

[fol. 85] The defendants, Wilson & Co. (Inc.), and its subsidiaries, are charged with all manner of divers conspiracies in relation to the ownership, operation and control of public stockyard market companies, stockyard terminal railroads, and market newspapers when in truth and in fact, Wilson & Co. (Inc.), and its subsidiaries, did not at the time and do not now own any of the capital stock or other interest in any such public stockyard market companies, stockyard terminal railroads, or market newspapers, nor did they exercise any control or influence whatever in shaping the business policies of any such companies.

Further answering, the defendants, for whom answer is herein made, deny that the defendant Wilson & Co. (Inc.), and its controlling heads set about to acquire the various stockyards, appurtenances, and privileges incidental thereto, as charged in the bill of complaint, and the defendants deny that there was any concert of action or common understanding between the parent companies in regard thereto, and the defendants deny that the ownership and control of stockyards by others than the parent companies, or one of their members, or controlling heads, was discouraged and opposed, as charged in said bill of complaint, but on the contrary, in so far as the defendant parent corporation, Wilson & Co. (Inc.), or any of its subsidiary companies who are defendants in this cause are concerned, they and each of them allege the facts to be that, as heretofore set forth, they have never acquired any stock or other interest in any of the stockyards referred to in said bill of complaint, nor have they refrained from purchasing any such interest, because same was owned or controlled, either wholly or partially, by any other parent company defendant in this cause; nor have they, or either of them, entered into any contract, agreement, or understanding with any other defendant in this cause, the purpose of which was to effect any of the matters or things alleged in said bill of complaint, but specifically deny each and every allegation therein contained in relation thereto.

And the individual defendants, for whom answer is herein made, and each of them, except Thomas E. Wilson, further specifically deny that they, or either of them, own any interest, directly or indirectly, in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper, as described in the bill of complaint, and deny each and every allegation in the bill of complaint in relation to stockyards, and further deny that they now have or exercise or heretofore have had or exercised any voice or power, or now have or have had any agreement or understanding, directly or indirectly, express or implied, to do or bring about any of the matters or things alleged in the bill of complaint.

And further answering, the defendant, Thomas E. Wilson, says that he is the owner of a small amount of stock in a few public stockyard market companies, purchased by

him as an investment and not for any of the purposes set forth in said bill of complaint.

And the defendant, Thomas E. Wilson, further answering, denies that either he, Wilson & Co. (Inc.), or any of its subsidiaries or any of the other individuals named in said bill of complaint as Wilson defendants, is or has ever been [fol. 86] in any combination, agreement, or understanding with any of the other defendants mentioned in said bill of complaint, or any other corporation, firm, or association to accomplish or effect any of the things or conditions set forth in said bill of complaint in relation to any stockyards or stockyard terminal railroads or market papers referred to therein.

And these defendants for whom answer is herein made, further answering, severally say that if it be true, as alleged in the bill of complaint, that the public stockyard market companies directly or indirectly own or control the available land surrounding the yards owned by such companies, it was no doubt acquired at the time said yards were established to provide necessary land for the future growth and expansion of its business and the extension of said yards.

The value of stockyards as an investment is dependent upon the number of heads of live stock handled through such yards. It is therefore to the interest of such stockyard company to encourage the establishment at such yards of as many packing plants and other enterprises essential to the maintenance of a market as can be induced to locate at such yards. The greater the number of such plants, the larger the requirements of such a market; and if it be true that new packing companies can secure desirable packing sites only from said stockyard companies or from the companies owned or controlled by said stockyard companies, or their principal stockyards, or that said stockyard companies are in a position to determine what packing companies and how many plants should be established at the various stockyards, as charged in the bill of complaint, these defendants aver that said facts do not constitute a violation of any law of the land; and, so far as they are informed and believe, no packing company or other related enterprise has ever been denied the privilege of se-

curing a location for its plant at any of such stockyards.

These defendants, further answering, aver that, according to their observation, information, and belief, the ownership by packing companies of an interest in public stockyard market companies has been to the advantage of such stockyard companies.

The acquisition of such interests has usually been followed by improved management, better facilities, new extensions, and greater efficiency in the handling of live stock at and through the yards. The packer had the greatest possible interest in maintaining a market for his raw material, to popularize it with the producer as far as it is possible to do so, in order that a continuous supply of live stock will be available for his requirements. Much of the trouble suffered by the packing industry has grown out of the impression and suspicion existing in the minds of some of the producers of live stock that the ownership or control of stockyards by packing companies in some mysterious manner gives to the packer a power to influence and manipulate the prices paid for live stock. There was never a grosser misconception or more erroneous assumption wholly unsupported by facts.

[fol. 87] These defendants, further answering, severally aver that for sanitary reasons, and to comply with the laws of the country and regulations of Government bureaus, it is essential to remove the carcasses of dead animals from the premises promptly; and in order to have some one ready at all times to perform that service and properly equipped to do so, the defendants are informed that it is customary to enter into contract with some responsible concern to perform that service. These defendants are informed and believe that the number of such animals dying either in transit or after arrival is not sufficiently large to support a number of plants for disposing of same, and that the stockyard companies do not determine or fix the price which shall be paid for such dead animals.

These defendants, for whom answer is herein made, further answering severally deny that they or either of them is or has been a party to any arrangement, understanding, or agreement with any of the other defendants herein or with any public stockyard market company, or with any other person, firm, or corporation whatsoever, whereby

any such stockyard company was induced or was attempted to be influenced to discriminate against certain commission men or traders in the leasing office space, or in the allotment of pens or other accommodations as alleged in the bill of complaint. That some offices and some pens are more advantageously located than others is true of any structure, but unfortunately they can only be occupied by one tenant at a time—and these defendants for whom answer is made herein, further answering upon information and belief severally deny that there is any discrimination against any packer or independent buyer by any stockyards terminal railway operating at any stockyards described in the bill of complaint; or that the control of stockyards and facilities appertaining to stockyards is used by defendants owning or controlling them as a means for favoritism in dealing with commissioned men; or that such control of stockyards and facilities appertaining thereto has resulted in any discrimination by the defendants owning or controlling them in favor of banks, cattle loan institutions, rendering plants and concern supplying food for live stock which are located at or near to any of the stockyards described in the bill of complaint; or that the control of stockyards and facilities appertaining thereto is or has been used by the defendants, or any of them, as a means to prevent the establishment of new packing plants or to hamper the growth of those in existence; or that the control of stockyards or facilities appertaining thereto is, or has been, used by the Wilson defendants as a means to prevent the development and limit the number of new markets or to centralize or restrict business to the stockyards so controlled; or that the control of stockyards and facilities appertaining thereto affords peculiar and exclusive access by the defendants, or any of them, to information concerning receipts and sales of live stock, its disposition and the dissemination of information to the producer. But, on the contrary, these defendants severally aver that according to their observations, information, and belief the service afforded by such stockyard companies is furnished without favoritism toward or discrimination against any shipper, dealer, packer, buyer, commission man, or any other [fol. 88] person, firm, or corporation transacting business at any or all of such stockyards.

Branch Houses

Third. These defendants further answering severally aver that Wilson & Co. (Inc.) and its subsidiaries operate approximately 120 branch houses in the United States, that said branch houses are established for the purpose of facilitating the sale and distribution of the products manufactured, produced, and sold by Wilson & Co. (Inc.) and its subsidiaries, and are not mere storage warehouses. These defendants further aver that the branch houses of Wilson & Co. (Inc.) and its subsidiaries are operated in actual and open competition with the branch houses of any and all the other defendants in this cause and in competition with all other persons, firms, and corporations engaged in a similar business.

Route Cars and Auto Trucks

Fourth. These defendants, for whom answer is herein made, further answering severally aver that the establishment by Wilson & Co. (Inc.) and its subsidiaries in their business of the system of distributing fresh meats, dairy and poultry products through refrigerator cars and auto trucks running on a fixed schedule has been an economic advantage to the country. It enables the smallest towns along such routes to receive regular supplies of food necessities and provides the producers with a much enlarged market for the consumption of their products. But these defendants deny the inference that there is anything unlawful in their use as a means of distribution. The use of refrigerator cars for such purposes is recognized, approved, and regulated by the Interstate Commerce Commission. All products so handled pay the same freight rates and are governed by the same rules and regulations as apply to or affect all other shippers handling the same commodities.

Cold-storage Warehouses

Fifth. These defendants further aver that the cold-storage warehouses described in the bill of complaint are necessary adjuncts and facilities for the preparation, conservation, and distribution of the food products stored therein, one of the objects of such storage being to conserve the surplus supplies of seasons of heavy or excess pro-

duction for use during seasons of light or under production, thereby furnishing a more uniform market for producers and supplying such products at lower prices to consumers during times of natural scarcity.

Parent Companies' Acquisition of Stockyards Terminal Railroads and Market Papers and the Power Given by such Control.

Sixth. These defendants for whom answer is herein made, further answering, severally deny, as they have heretofore done, that the defendant Wilson & Co. (Inc.), or its subsidiaries, have acquired any interest in or control over [fol. 89] any public stockyard market companies, stockyard terminal railroads, or stockyard market newspapers, and, consequently each and all of the allegations contained in said bill of complaint, dealing with the power of such ownership or control and the manner in which it is alleged to be exercised, can have no application to the defendant Wilson & Co. (Inc.), or any of its subsidiaries, and, therefore, these defendants, and each of them, further answering, severally deny that Wilson & Co. (Inc.) and its subsidiaries, acting in concert or otherwise with any or all of the defendants named in said bill of complaint, have employed any power or privilege possessed by them through any such agencies to effect or discourage or suppress the establishment of independent packing companies or of dwarfing the growth of such independent packing companies as might then be in existence, as charged in said bill of complaint, and the said defendants further deny that the defendant Wilson & Co. (Inc.), parent company, or its subsidiaries, either alone or in concert with any or all of the other defendants named in said bill of complaint, have in any manner attempted to monopolize the meat industry of the country or artificially or otherwise control the ultimate price which the consumer pays for meat or meat products, as charged in the bill of complaint.

Contracts in Restraint of Trade

Seventh. And these defendants, for whom answer is herein made, and each of them, further answering, severally deny that Wilson & Co. (Inc.), the parent company, has entered into any unlawful contract or combination with

any other defendant named in said bill of complaint to restrain trade and commerce and to artificially or otherwise prevent between themselves competition in prices for which meat and meat products are sold.

These defendants further severally deny the existence of any contract, agreement, arrangement, understanding, or practice by which purchases of live stock by Wilson & Co. (Inc.), the parent company, has been gauged, divided, or distributed between Wilson & Co. (Inc.), the parent company, and any other defendant or defendants named in said bill of complaint. These defendants further deny that any purchases of live stock by Wilson & Co. (Inc.), the parent company, have been made in accordance with or pursuant to any agreement, understanding, or arrangement with any other defendant in regard thereto; or that the divers percentages of the purchases by the respective defendant parent companies of live stock at the various stockyards were agreed upon, and further deny that any understanding, agreement, or arrangement was had or made that certain of the parent companies should buy in certain stockyards or should refrain from buying at certain stockyards, as charged in the bill of complaint.

These defendants severally deny that any arrangement, agreement, or understanding was entered into with any other person, firm, or corporation designated in said bill of complaint as "independents" engaged in the meat packing business, whereby purchasing between Wilson & Co. [fol. 90] (Inc.) and its subsidiaries and such so-called "independents" was affected upon a percentage basis, as charged in the bill of complaint. And these defendants severally say that they, or either of them, to the knowledge or belief of the others, or other of them, do not know whether the percentage of purchase of live stock by the parent companies, other than the defendant herein, for whom answer is made, were uniform and approximately constant, as alleged in said bill of complaint, but on the contrary, from the best of their knowledge and belief, the defendants for whom answer is herein made aver that the purchases of live stock of the several defendant parent companies have not been uniform or constant in respect of any ratio of percentage, to the other defendants in this cause, or uniform as to the purchases made by the so-called "independents," and the defendants for whom

answer is herein made expressly deny that the percentages of purchases of live stock by Wilson & Co. (Inc.) have been uniform in any week, month, or year, as compared to the purchases of others, and the defendants severally aver that any and all of the purchases of live stock made by the said Wilson & Co. (Inc.) and its subsidiaries were not the result of and were not controlled or governed by any agreemen, understanding, combination, or conspiracy by and between the parent companies or any of their officers or employees, or with any other person, firm, or corporation whatsoever, but that they were the result of the trade demand of said Wilson & Co. (Inc.) and its subsidiaries and the active competition existing between Wilson & Co. (Inc.) and its subsidiaries and each and all of the other defendants named in the said bill of complaint.

And said defendants further answering severally aver that each and every allegation in said bill of complaint relating to the purchase of live stock on a percentage basis are found upon misconceptions and are in fact untrue; that the defendants, Wilson & Co. (Inc.) and its subsidiaries, are ever alert to maintain the volume of their business and to increase it wherever and whenever possible, without regard to the policy of any other company engaged in a similar business and in competition with any and every such company. The meat food products of Wilson & Co. (Inc.) and its subsidiaries are distributed to the public through the medium of retail dealers, Wilson & Co. (Inc.), and its subsidiaries have their regular line of customers among such dealers and it is the business policy of Wilson & Co. (Inc.) and its subsidiaries to supply as far as possible all the trade demands of its customers and to secure new customers wherever and whenever possible. Wilson & Co. (Inc.) and its subsidiaries purchase in the open markets of the country a sufficient number of live stock to fill their trade requirements without regard to how it may figure out in comparison with the purchases of any other person, firm, or corporation. If the demands of their customers increase the purchases of live stock are increased accordingly, and if there is a decrease in the demand, likewise purchases are decreased. The law of supply and demand govern- the aggregate purchases of live stock by Wilson & Co. (Inc.) and its subsidiaries, and from their knowledge of the business and their belief based upon observatons the ratio

[fol. 91] of the volume of business transacted by the several defendants in this cause is not more uniform than will be found to exist between competitors in any other basic industry in this country.

And these defendants for whom answer is herein made, further answering, severally aver that Wilson & Co. (Inc.), and its subsidiaries annually purchase and slaughter approximately 3,000,000 head of hogs, 1,000,000 head of cattle, and 1,000,000 head of lambs. In order to increase their annual purchase to the extent of 1 per cent it would mean that retail dealers handling the products of Wilson & Co. (Inc.), and its subsidiaries would be required to secure approximately 10,000 new customers who would exclusively purchase the Wilson brand of commodities for the entire year. It would mean the additional purchase and slaughter by Wilson & Co. (Inc.) and its subsidiaries of approximately 30,000 head of hogs, 10,000 additional cattle, and 10,000 lambs, representing an outlay of approximately $2,500,000 for the raw materials. Therefore, while the variations in the percentage of purchase of live stock from year to year may appear to be very small, yet the smallest fraction of an increase or decrease actually represents a very considerable number of live stock and quite a volume of business in money values. It is and has been the purpose of Wilson & Co. (Inc.) and its subsidiaries to use all lawful and legal means at their disposal to maintain their present volume of business and to increase it as much as possible.

These defendants, further answering, severally deny that means were adopted by any of the defendants named in the bill of complaint whereby and by the parent companies' control over stockyards, sales to outsiders or so-called Independents were controlled in any manner by Wilson & Co. (Inc.) or any of its subsidiaries, as charged in the bill of complaint; and these defendants deny that such control as the parent companies, other than Wilson & Co. (Inc.), have exercised over stockyards, stockyards loan institutions, stockyards terminal railways, and other facilities incidental to the operation of such stockyards has discouraged opposition or competition by commission men or by so-called independent packers, as charged in the bill of complaint. As heretofore alleged, the defendant parent

company, Wilson & Co. (Inc.), nor any of its subsidiaries own or control any interest in said stockyards, terminal railroads or the instrumentalities by means of which any of such results were accomplished, if indeed any such conditions were created as alleged, all of which these defendants deny.

Control of Substitute Foods

Eighth. These defendants, further answering, severally deny that they have eliminated competition in meat products, as charged in the bill of complaint.

Wilson & Co. (Inc.) and its subsidiaries are in active, open, free, and unrestricted competition with over 1,000 persons, firms, and corporations engaged in the business of slaughtering live stock in this country, more than 300 of which are engaged in interstate commerce. Moreover, [fol. 92] the meat products of said Wilson & Co. (Inc.) and its subsidiaries are sold in active competition with the products of local butchers in all sections of the country. It is absurd to charge that the defendants in this cause have eliminated competition in meat products when all of said defendants together do not slaughter in excess of 35 per cent of the cattle slaughtered for food in this country.

These defendants further deny that Wilson & Co. (Inc.) and its subsidiaries set about to control the Nation's sale of fish, vegetables, either fresh or canned, fruits, cereals, milk, butter, cheese, eggs and other foods ordinarily handled by wholesale grocers or produce dealers, as charged in the bill of complaint, and these defendants deny that their method of handling any such commodities has or had the effect of eliminating competition in the sale or of fixing the price of said products, but, on the contrary, they, and each of them, aver that according to their knowledge, information, and belief the total volume of business transacted by each, any, and all of the defendants in any of the commodities mentioned in this paragraph was only a small fraction of the total volume of business transacted in the United States in the said commodities; that the total volume of the business handled by the defendants in this cause in all of the so-called grocery lines approximates in the aggregate about $100,000,000, whereas the defendants are in-

formed and believe and so represent that the total volume of such business transacted by competitors other than the defendants herein, including the wholesale grocers, aggregates more than $4,000,000,000 annually.

These defendants further aver that the business in such lines transacted by each of the parent companies and their subsidiaries is separate, distinct, and independent from the business transacted by any other parent company or its subsidiaries, and said defendants deny that there is any contract, agreement, understanding, or concert of action by and between Wilson & Co. (Inc.) and its subsidiaries and any of the defendant parent companies in this cause whereby they, or any of them, have attempted to monopolize commerce in any of the products above mentioned, and further deny that any acts of Wilson & Co. (Inc.) and its subsidiaries have resulted in the defendants, or any of them, obtaining complete control of any food products, as charged in the bill of complaint, or any such control as would in the remotest degree approximate a monopoly in commerce in any of such food products; and these defendants further deny that great numbers of competitors have finally abandoned and quit their business or sold out to the defendant parent companies or their subsidiaries, as charged in the bill of complaint, but, on the contrary the defendants aver that according to their information and belief a few such competitors for sufficient reasons of their own may have retired from business, but the number of competitors in such lines of business has increased, and the volume of such business transacted by them has constantly grown and is now greater than at any previous time in the history of this country.

These defendants emphatically deny that unless prevented by a decree of this court the defendants will within the compass of a few years control the quantity and price [fol. 93] of each article of food found on the American table, as charged in the bill of complaint.

And as a further evidence of the lack of facts to support the theories of said bill of complaint these defendants aver that long prior to the filing of the bill of complaint in this cause and long prior to the time that the Department of Justice took up for consideration the issues involved in its complaint Wilson & Co. (Inc.) and its subsidiaries determined of their *won* volition to retire from the business

of manufacturing, transporting, and distributing through their distributive system many of the products theretofore handled by them, such as canned goods and groceries. To this end they have long since disposed of all their manufacturing plants whereby fish and vegetable foods were manufactured, and steps are being taken for a final discontinuance of their distribution. This decision was not taken because of any existing contracts, agreements, or understandings in violation of law or of sound business ethics.

Wilson & Co. (Inc.) and its subsidiaries deny any and all allegations in said bill of complaint that its entry into or the handling of any of the so-called unrelated lines of food or so-called substitute food products was in any manner a violation of any law of the land or of sound economics or was against the interest of the producing or consuming elements of the population of this country.

Financial Growth, Present Net Worth, and Volume of Business

Ninth. The defendants for whom answer is herein made further severally say that they, or any or either of them, to the knowledge or belief of the others, or other of them, do not know and have never been informed, save by the bill of complaint and through the public press, of the facts in relation to the financial growth of the parent companies other than Wilson & Co. (Inc.), the parent company, for whom answer is herein made, or in regard to the payment of cash dividends by any of said parent companies, other than Wilson & Co. (Inc.), and therefore neither admit nor deny the averments contained in the bill of complaint in regard to the financial growth of said parent companies; but answering specifically for Wilson & Co. (Inc.), they aver that its financial growth has been the result of sound business management, in conformity with the laws of the land, and not a result of any combination, agreement, or understanding with any other person, firm, or corporation that gave it the slightest advantage over any of its competitors or influenced it to act in concert with any other person, firm, or corporation.

Number of Controlled Companies

Tenth. These defendants further severally say that they, or any or either of them, to the knowledge or belief of the others, or other of them, do not know the number of corporations and concerns, including trade names, which the parent companies, or the individual defendants and their families maintain and control, as set forth in the bill of [fol. 94] complaint, further and beyond those relating to said Wilson & Co. (Inc.) (parent corporation defendant) herein, and therefore neither admit nor deny the averments contained in the bill of complaint in regard to the number of corporations and concerns, including trade names, which such other parent companies, or individual defendants and their families maintain and control, but answering specifically for Wilson & Co. (Inc.), and the other defendants for whom answer is herein made, these defendants deny that any corporation or concern or trade name controlled by it or them in any manner violates any law of the land.

Control of Various Industries

Eleventh. These defendants deny that if the growth of the parent companies and their subsidiaries is permitted to continue unchecked they will within a few years completely control the various industries in which said defendants are engaged.

Extent of Control in the Substitute Foods and Unrelated Commodities

Twelfth. These defendants for whom answer is herein made further severally say that they, or any or either of them, to the knowledge or belief of the others, or other of them, do not know and have never been informed, save by the bill of complaint and through the public press as to the volume of business transacted by Armour & Company in 1916, and therefore neither admit nor deny the averments contained in the bill of complaint in respect thereof.

Thirteenth. These defendants for whom answer is herein made further severally deny that Wilson & Co. (Inc.) and its subsidiaries have any purpose or intention of securing control of the market for the so-called substitute meat foods, as alleged in the bill of complaint; but on the con-

trary the defendants herein aver that it is impossible that any or all of the defendants, even if they should act together (which they do not), in pursuance of a common purpose and design to attempt or secure control of the market for meat or meat substitute foods, as alleged in the bill of complaint, that, so long as the raw material entering into the manufacture of meat and meat food products is in the hands of millions of producers and is sold in the open markets of the country in free competition such as actually exists in the sale of said raw material, no man or group of men may secure a monopoly thereof.

These defendants further aver that there are over 1,000 persons, firms, and corporations in the United States engaged in business in active competition with Wilson & Co. (Inc.), and its subsidiaries and with the other parent corporations and their subsidiaries named as defendants in said bill of complaint, of which more than 300 are engaged in interstate and foreign commerce. All of said other concerns purchase their raw materials in the open market in competition with the defendants herein and sell their prod-
[fol. 95] ucts in the markets of the world in competition with each and all of the said defendants, each of whom is in open active competition with the other.

Individual Defendants

Fourteenth. The individual defendants named in said bill of complaint as Wilson defendants, answering further for themselves and each for himself, deny all and singular the allegations in said bill of complaint, wherein it is charged directly or indirectly, inferentially or otherwise, that they, or either of them, jointly or severally, have entered into any contract, agreement, or understanding with any other person, firm, or corporation, named as a defendant in said bill of complaint, to establish or create a monopoly or any restriction or restrictions in trade or commerce between the States or foreign nations, or to do any of the acts or things alleged in said bill of complaint as violating the laws of the land.

Fifteenth. Said individual defendants aver that they are the managing officers of Wilson & Co. (Inc.), and its subsidiaries, named as defendants herein; that it is and has been the constant aim and purpose of each of said indi-

vidual defendants to conduct the business of said corporation, defendants for whom answer is herein made, in strict conformity with the laws of the land and in consonance with the highest commercial ethics and ideals; that the bill of complaint in this cause follows closely the report of a Government bureau, made after an ex parte investigation, in which the defendants herein were not given an opportunity to testify or explain any of the matters or things set forth in said report.

The individual defendants further answering severally aver that the packing-house industry is but the manufacturing and distributing agency between the producer, on the one hand, and the consuming public, on the other; that when the prices of live stock are high and profitable to the producer, the consumers complain of the high cost of the products, and, on the other hand, when they are low, the producer is dissatisfied, and out of this unfortunate situation has grown the basis for the allegations in the bill of complaint which are grounded upon misconceptions, inaccuracies, and unwarranted deductions, having no foundation in fact.

Conclusion

Sixteenth. These defendants for whom answer is herein made, and each of them further answering, severally deny all, and all manner of unlawful combination and conspiracy wherewith they are by the said bill of complaint charged, or that the complainant is entitled to the relief, or any part thereof, in said bill of complaint demanded, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Respectfully submitted.

Wilson & Co. (Inc.), Wilson & Co., Wilson & Co. (Inc.), of California, Wilson & Co. (Inc.), of Louisiana, Wilson & Co. (Inc.), of Oklahoma, South Dakota Provision Company, Gotham Hotel [fol. 96] Supply Company (Inc.), Standard Beef Company, Stiefel O'Mara Company (Inc.), Drexel Packing Co., Albert Lea Packing Company (Inc), Mississippi Packing Company (Inc.), Morton-Gregson Company, Paul O. Reymann Company, Standard Provision Company, Central Products

Corporation, Thomas E. Wilson, Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D. Hopkins, Adolph E. Petersen, George H. Cowan, William C. Buethe, Carl F. Burrell, James C. Good, by Jewell P. Lightfoot, Solicitor.

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF CUDAHY DEFENDANTS—Filed February 27, 1920

Now come the defendants in the above-entitled cause (herein called "Cudahy defendants") viz:

1. The Cudahy Packing Company in said bill of complaint designated as a "parent company."

2. The Cudahy Packing Company of Nebraska, The Cudahy Packing Company of Louisiana Limited, The Cudahy Packing Company of Alabama, Nagle Packing Company, in said bill of complaint designated as "defendant subsidiaries."

3. Edward A. Cudahy, sr., Edward A. Cudahy, jr., Guy C. Shepard, John E. Wagner, Andrew W. Anderson, Emil A. Strauss, Frank E. Wilhelm, George Marples, designated in said bill of complaint as "individual defendants"; all by George T. Buckingham and Thomas Creigh, their solicitors, and for answer to the bill of complaint in the above-entitled cause, or to so much thereof as these defendants are by counsel advised is necessary or material to be by him or any of them answered, say:

Cudahy defendants admit that said The Cudahy Packing Company is a corporation organized under the laws of the State of Maine. They aver, however, that said corporation was organized in October, 1915, and began business on the first day of November, 1915, and that said corpora- [fol. 97] tion, prior to that date, was never engaged in any business or activity.

They aver that individual defendants, Edward A. Cudahy, sr., since the organization of said The Cudahy Pack-

ing Company has been its president, and Edward A. Cudahy, jr., its vice president, and that the other individual defendants, since the organization of said parent company, have been connected with its as officers or employees.

Cudahy defendants deny that they or any of them have now or have ever had any stock ownership or other interest in Western Meat Company, Oakland Meat & Packing Company, Nevada Packing Company, or that either of said companies is or has ever been a subsidiary of any of the Cudahy defendants.

Court's Jurisdiction

Cudahy defendants admit, for the purpose of this action, that said parent company, since its organization, November 1, 1915, has been, and now is, engaged in interstate and foreign commerce, and that it transacts the kinds of business as alleged under (a), (b), (c), and (d) of paragraph 1 under the above head, and also to a limited extent as alleged under (e) and (f) of said paragraph 1; and as to said latter limited number of items, none of them are unrelated to the general business of parent company but are all a natural out-growth of same, and economically related thereto.

Cudahy defendants deny that they or any of them by means of any unlawful means or method, or otherwise, attempted to dominate, control, or monopolize a very great portion or any portion, of the food supply of the Nation; or that they have, in conjunction with any person or corporation whatever, built up by any means, or attempted so to do, any unlawful monopoly in, or any control over, divers and sundry products mentioned in said bill, as alleged in said bill.

Cudahy defendants deny that by any methods, whatever, any of them have attempted or are attempting to increase or extend any monopoly, or that they are or any of them have been enabled in any manner, artificial or otherwise, to control the supply or price of the food supplies of the Nation, as alleged in said bill.

Object to be Attained

Cudahy defendants deny that any monopoly exists, or has been attempted, by any of them, as alleged under this head.

The Nature of the Business and Method by Which it is Conducted

Cudahy defendants admit that the allegations of the bill of complaint under this head are substantially true and correct, except that they aver that the "invention of refrigerator cars" was only one of the elements which caused said parent company to widely extend its market, and to [fol. 98] make the same Nation wide, and they allege that many other elements of natural growth and legitimate business development entered into and caused such expansion of business.

Defendants further aver that the business established by its predecessor corporation was begun in 1887, and that while in its inception this predecessor devoted itself exclusively to the slaughter of live stock, it from the very beginning in addition to dressing the carcass and selling the dressed meat to retail butchers, also engaged in the business of preparing various by-products, such as hides, fertilizer, bones, hair, etc., and that more than 30 years ago said predecessor began its operations and developed its business in other kindred lines in the manufacture and dealings in other articles both edible and inedible which were not derived from live stock.

The Stockyards

Cudahy defendants admit that the allegations in the bill of complaint under this head, are substantially true and correct in so far as they relate to the stockyards being a public market place, but they deny that the stockyards afford the cattle raiser the opportunity to dispose of his live stock for an immediate cash price. They aver that the stockyards provide facilities for attending to the handling of the live stock itself, and is a place where commission men, packers, feeders, and all other dealers have common access to the live stock for the purpose of independently buying, trading, selling, and inspecting it, but that all of these activities are entirely independent of any relation to the stockyards as such, and that in fact it is largely the facilities and financial resources of the packers and other dealers which provide to the cattle raiser the opportunity to dispose of live stock as alleged.

Defendants further deny that the stockyards by reason of its dominating position controls the conveniences and facilities associated with it, as alleged in said bill of complaint.

Conveniences and Facilities Controlled by Stockyards

Cudahy defendants aver that said parent company owns packing houses in or near, and does business at, the stockyards following, and at none other, to wit:

Sioux City, Iowa; Omaha, Nebr.; Kansas City, Kans.-Mo.; Wichita, Kans.; and North Salt Lake City, Utah.

With reference to these stockyards (and only as to these), Cudahy defendants, as to the subject matter of the respective subheads, under the above general head, say:

Packing-house sites: That they deny the allegations of the bill of complaint.

Sites for stockyards banks and cattle loan companies: That they deny the allegations of the bill of complaint.

Rendering plants: That they deny the allegations of the bill of complaint.

[fol. 99] Commission men's office space: That they admit the allegations of the bill of complaint.

Terminal railways: That they deny the allegations of the bill of complaint.

Market papers and journals: That they admit the allegations of the bill of complaint.

That they deny that control of said stockyards or of any facilities appertaining to said stockyards carried with it any of the profits, means of favoritism, means to prevent the establishment of new packing plants, means to prevent the development or to limit the number of new markets, or peculiar and exclusive access to information, and that they deny all allegations as alleged in paragraphs (a), (b), (c), (d), and (e) under the above general head.

That they further expressly deny that any said stockyards ever has—

(a) Derived any profit from the meat industry "levied upon it" as alleged in paragraph (a); or

(b) Exercised any favoritism in dealing with commission men or granted any monopolies, as alleged in paragraph (b); or

(c) By any means or method prevented the establishment of new packing plants or hampered the growth of those in existence, as alleged in paragraph (c); or

(d) Prevented the development or limited the number of new markets or centralized or restricted stockyards business, as alleged in said paragraph (d); or

(e) Possessed or used any peculiar or exclusive access to information, as alleged in paragraph (e).

Branch Houses, Route Cars, Auto Trucks, and Cold Storage Warehouses

Branch houses: Cudahy defendants admit the allegations of the bill of complaint under this subhead to be substantially true and correct, except that they have no direct knowledge as to the number of branch houses maintained in the United States by all interstate slaughterers and therefore neither admit nor deny the allegations concerning numbers.

Route cars: Cudahy defendants admit that the allegations of the bill of complaint under this subhead are substantially accurate and correct, except that they have no direct knowledge as to the total number of route cars operated by all parent companies, or the percentage which those bear to the total operated in the entire packing industry, or the number of towns reached thereby, or the number of States in which the same operate, and they therefore neither admit nor deny the allegations concerning numbers and percentage.

Auto trucks: Cudahy defendants neither admit nor deny the allegations under this subhead, but aver that none of them have ever operated any auto trucks over any route under the system or otherwise, as alleged under said subhead.

[fol. 100] Cold-storage warehouses: Cudahy defendants deny the allegations under this subhead.

The Parent Companies' Acquisition of Above-described Facilities and Their Purpose in Doing So

Cudahy defendants deny that they, or any of them, ever set about the acquisition of stockyards and appurtenances and privileges incidental thereto in the manner or with the purposes as alleged under said head.

They deny that such was done in any instance, or that it was done by concert of action or pursuant to a common understanding between any of the Cudahy defendants and any of the defendants in this bill of complaint other than Cudahy defendants.

They deny that the acquisition of control of any stockyards by any defendant to the bill of complaint other than Cudahy defendants was acquiesced in by any of Cudahy defendants, or that any defendant other than Cudahy defendants ever acquiesced in the acquisition of any interest in any stockyards ever acquired by any of Cudahy defendants, or that any of Cudahy defendants ever discouraged or opposed the acquisition by any other defendant of any interest in any stockyards or that any defendants other than Cudahy defendants ever opposed or discouraged the acquisition by Cudahy defendants, or any of them, of any stockyards property or any interest therein; but, on the contrary, Cudahy defendants aver that none of them have any interest whatever in any stockyards company or property, except only as follows, to wit:

Holdings in Stockyards Companies Jan. 30, 1920

	Par value	Number of shares			
		C. P. Co.	E. A. C.	E. A. C., Jr.	Total
Sioux City Stockyards Co. (preferred)	$100.00	1,117	.....	.....	1,117
Wichita Union Stockyards Co. (common)	100.00	6,140	119	.....	6,259
Salt Lake Union Stockyards Co. (common)	100.00	5,625	.....	.....	5,625
Union Stock Yards Co. of Omaha (Ltd,) (common)	100.00	.....	31	.....	31
Kansas City Stockyards Co. (common)	100.00	.....	500	.....	500

That in said Wichita property, and in said Salt Lake property, no defendant, other than Cudahy defendants, have any stock ownership or interest whatever; that all of said interests so acquired by any of the Cudahy defendants were acquired for purely legitimate business purposes, as investments and for value received.

They deny as to said stockyards companies in which any of them are interested, that, in pursuance of a common purpose, plan, and design, or otherwise outside investors [fol. 101] and independent packers have been forced out as dominating factors in the ownership and management of

said stockyards or that such have been replaced by any defendant or representative thereof, as alleged under the above head.

Cudahy defendants deny that by the various means set forth in said bill of complaint, or otherwise, the Cudahy Packing Company has, directly or indirectly, obtained control of any stockyard whatever, or that it has any interest in any except only as above set forth.

Cudahy defendants deny that by reason of their control of any stockyard, or otherwise, they have granted exclusive privileges such as the right to purchase dead animals, furnish supplies and facilities, locate cattle banks and cattle loan companies, or otherwise, to concerns and corporations in which they, or some of them, are stockholders, as alleged under this head. On the contrary, they aver that all of their acts as owners of any interest in said two stockyards, in which they have any substantial interest, have been in complete harmony with the holders of the majority of the stock in such stockyards company, and that Cudahy defendants, separately or collectively, do not own a majority of the stock in any said stockyards company, and that any or all of Cudahy defendants, in connection with any other defendants, do not in any case own a majority interest in any said stockyards company, and that none of Cudahy defendants have at any time ever exercised the aforesaid exclusive rights and privileges alleged under this head.

Cudahy defendants deny that any of the acts alleged under this head have been done with the intent and purpose alleged in said bill of complaint, or have had the effect therein alleged, or that the Cudahy Packing Company has been enabled thereby to obtain vast profits, or any profit, from the management of any said stockyard or from the granting of any said exclusive privileges relating thereto, or that said the Cudahy Packing Company has realized vast profits or any profits which were not disclosed in its profits on its books.

Cudahy defendants deny the Cudahy Packing Company has attempted to monopolize the meat industry of the country, or to artificially control the ultimate price which the consumer pays for meat and meat products, either by its own acts or in conjunction with any other defendant, as alleged under this head, or otherwise.

Cudahy defendants deny that the Cudahy Packing Company has ever entered into any unlawful contract or combination to restrain trade and commerce, or to artificially prevent between it and other defendant parent companies competition in the prices for which meat and meat products are sold as alleged under this head.

Cudahy defendants further deny that any contract or agreement described in said bill of complaint as "the percentage purchase agreement," or anything similar thereto, exists or was ever entered into or participated in by the Cudahy Packing Company parent corporation, or that it ever entered into or participated in any contract or agreement with any one which had as its ultimate object the [fol. 102] elimination of competition in the purchase of live stock or in the sale of dressed meats, as alleged under this head or otherwise.

They deny that it is a "well-established commercial principle" that limitation on the source of supply, and consequent limitation on volume of business, remove all incentive to reduce prices, or necessarily tend to do so, as alleged under this head.

With reference to the purchase of live stock, they deny that the Cudahy Packing Company agreed with said parent companies, or with anyone, or thereafter recognized between it and them certain percentages or proportions of purchase to which they deemed that each was entitled, and they deny that said the Cudahy Packing Company thereafter gauged its purchases in such manner that its annual purchases approximated actually or substantially percentages agreed upon, as alleged under this head.

They deny that as a means of perfecting this arrangement, or otherwise, divers percentages varying at different stockyards were ever agreed upon by or for the Cudahy Packing Company, or that understandings were had by or for it that certain parent companies should buy in certain yards, or should refrain from buying in certain yards, or that in order to prevent such plans from being disarranged by outsiders, or otherwise, agreements were made by the Cudahy Packing Company with "outsiders" by which its purchases were conducted on any agreed percentage basis, as alleged under this head.

They deny that by virtue of its control over any stockyards, or by any other method, purchases by outsiders or independents were ever controlled by the Cudahy Packing Company or by any agreement whatever made by or for it, or that it, by any control or by any agreement, ever discouraged any opposition by commission men or independent packers, as alleged under this head.

Cudahy defendants aver the fact to be that the Cudahy Packing Company and its subsidiaries, operates at various points in the United States a total of 105 branch houses and, in addition thereto, a large export and other business; that these branch houses are equipped with refrigeration and other facilities; that it employs therein a large number of salesmen; that it sells and distributes its products therefrom, within the territory naturally and commercially adjacent and tributary to each; that it makes every effort within its power, and by the best business activity and efficiency of which it is capable, to sell as much as it can; that the great bulk of said products originate at the said packing houses of the Cudahy Packing Company parent company; that at its packing houses, and at its branch houses and other said distribution facilities it has refrigeration and storage space in which it keeps products in the brief period between manufacture and sale; that naturally and logically the parent company purchases and slaughters at its packing plants such number of animals and such number only as it can reasonably expect and anticipate will yield the quantity of products which can be marketed through its said branch houses and other facilities; that the amount of product which it can sell necessarily determines and limits the number of animals which it buys and slaughters; that [fol. 103] it has never entered into any agreement and could not in the nature of the economic situation enter into any agreement which would either limit or expand the extent of its purchases, the latter being determined by the amount of products which it is able (a) to manufacture at its plants, (b) to keep and to refrigerate pending sale, and (c) to handle and sell through its branch houses, car routes, foreign trade outlets and other sale facilities.

That all other packers, handling the same products, and including the other so-called parent companies are similarly situated with respect to marketing their said products through their branch houses and otherwise; that all branch

houses and sales outlets are in keen and active competition with each other at various market and consuming points and the distributing centers; that the necessary result of this trade situation and the competition existing at said centers, is that each of the said packers is able to sell and distribute from one month to another, and annually, a similar proportion of products; and the natural result of this is that the purchase of live stock by the several parent companies maintain throughout monthly and yearly periods, substantially a similar percentage relation to each other; that this condition has always obtained in the packing business, and, in the opinion of the Cudahy defendants, always will obtain; that it is brought about by competition, and by the economic situation, and by the natural laws of trade and commerce, and not by any agreement or combination; that the aggregate purchase of live stock by the parent companies, and by the packing industry as a whole, is very great, amounting annually to millions of animals. In 1916 this latter total, according to the Federal Trade Commission, was approximately 70,000,000 animals; that there are daily, weekly, and monthly fluctuations in the relative number of its purchases by the various defendant parent companies; that these variations are considerable and substantial, amounting to hundreds of thousands of dollars; there are also great variations in the kind, character, quality, weight, and value of the respective animals purchased. When, however, these very great numbers are compared to each other, and the comparison expressed in percentages, it is inevitable that substantially similar percentages will appear from year to year, although the actual variations, as among the several packers, are in themselves enormous.

Control of Substitute Foods

These defendants deny that competition ever has been eliminated in meat products, as alleged under this head.

They deny that for the purpose of preventing the public from turning to meat substitutes, or for any other purpose they, or any of them, individually or collectively, or with any or all defendants, set about controlling the Nation's supplies of fish, vegetables, fresh or canned fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitutes

ordinarily handled by wholesale grocers or produce dealers or any of them, as alleged under this head.

They deny that to accomplish said purpose, or to accomp- [fol. 104] lish any purpose, they, or any of them, ever availed themselves of advantages available in route cars, auto trucks, branch houses, storage warehouses owned or controlled by the Cudahy defendants, or any of them, they deny that said advantage, or any advantages, were ever employed by Cudahy defendants in fixing prices so low as to gradually or otherwise eliminate competition, as alleged under this head.

They deny that they have participated in any attempts to monopolize which have resulted in complete control, or any control, in any substitute food lines, or that they are invading any fields, as alleged under this head.

Extent to Which the Monopolistic Attempts Have Been Successful

Financial Growth, Present Net Worth, and Volume of Business:

Cudahy defendants, as to the allegations under this subhead, say that they have no direct or authoritative information concerning the subject matter of the first paragraph, but that they are informed and believe that said allegations are untrue. Therefore, upon information and belief, they deny said allegations and each of them under the first paragraph of this subhead.

Cudahy defendants deny that there has been realized by the Cudahy individual defendants, or any of them, vast profits or any profits, in addition to those shown upon the books of the parent company, arising from any advantages or privileges growing out of interlocking control of stockyards and stockyard appurtenances, as alleged in the second paragraph under this subhead.

Number of Controlled Companies:

Cudahy defendants deny the allegations under this subhead, and particularly they deny that they, or any or all of them, control or have any interest in 762 corporations, or 574 corporations, or 131 trade names, or in any number of corporations or trade names remotely approximating either of said alleged numbers.

Cudahy defendants deny that they have acquired or have organized any corporations, whatever, in furtherance of any general scheme and plan of action with defendants other than Cudahy defendants, as alleged under this subhead.

Extent of Industrial Control in the Substitute Foods and Unrelated Commodities:

Cudahy defendants deny that they, or any of them, exercise any degree of control in the various mentioned industries, as alleged under this subhead.

Cudahy defendants, as to the allegations concerning the business of Armour & Company, have no direct or authoritative information, and, therefore, neither admit nor deny the same.

Cudahy defendants deny that they, or any of them, are engaged in the business of canned fish, vegetables, and sun- [fol. 105] dry canned and dried fruit, and soda fountain supplies.

Cudahy defendants deny that they, or any of them, are engaged in the business of fruit preserves and grape juice, except only that Edward A. Cudahy, sr., and Edward A. Cudahy, jr., own and control a corporation called The Red Wing Company (Inc.), which manufactures fruit preserves and grape juice in a small and relatively negligible amount, and which has always been entirely independent of The Cudahy Packing Company.

Individual Defendants

Cudahy defendants admit that the Cudahy individual defendants are either officers, directors, agents, or employees of the Cudahy parent company. They deny that Cudahy individual defendants are financially interested to a great extent in stockyards, but aver that none of them is financially interested therein except only as above set forth. They deny that any of said Cudahy individual defendants are financially interested in terminal railways, cattle loan banks, rendering companies, and other institutions interrelated with stockyards, except only that E. A. Cudahy, sr., owns, and for more than twenty years has owned, eighty (80) shares of stock in one rendering company and twenty-five (25) shares of stock in another. They deny that any acts of theirs, or any of them, enable the Cudahy parent

company to carry out the purpose of the supposed combinations described in said bill of complaint, and they deny that any such combination exists.

They deny that the Cudahy parent company, or its subsidiaries, either by itself or in conjunction with any other person or corporation, has complete control, or is likely ever to have complete control, or any control, over meat products or substitute foods, as alleged under this subhead.

Prayer

Wherefore, these defendants, having answered this bill of complaint, deny that the plaintiff therein is entitled to the relief sought by the prayer of said bill of complaint, or to any relief whatever, against Cudahy defendants, or any of them, and hence pray that they may be, and that each of them may be, hence dismissed.

The Cudahy Packing Company, Parent Company; The Cudahy Packing Company of Nebraska, The Cudahy Packing Company of Louisiana, Limited, The Cudahy Packing Company of Alabama, Nagle Packing Company, Subsidiaries; Edward A. Cudahy, Sr., Edward A. Cudahy, Jr., Guy C. Shepard, John E. Wagner, Andrew W. Anderson, Emil A. Strauss, Frank E. Wilhelm, George Marples, Individuals, all appearing by George T. Buckingham, Thos. Creigh, Solicitors for Cudahy Defendants.

Dated February 27, 1920.

[fol. 106] In Supreme Court of the District of Columbia

[Title omitted]

Answer of Western Meat Company and Others—Filed February 27, 1920

The Joint and Several Answer of the Following-named Defendants to the Bill of Complaint Filed Herein

Corporations:

	Organized under the laws of—
Western Meat Company	California.
Oakland Meat and Packing Company	California.
Nevada Packing Company	Nevada.

Individual:

Fred L. Washburn.

These defendants now and at all times hereafter saving unto themselves all manner of benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties, imperfections, and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

These defendants aver that none of the corporations described as parent companies in the bill of complaint in this cause has any ownership, interest, or title in and to any of the capital stock or property of any of these corporation defendants, and none of these corporation defendants is a subsidiary of any of said parent companies.

"Court's Jurisdiction"

These defendants neither admit nor deny that the parent companies referred to in the bill of complaint, either directly or through subsidiaries are engaged in—

[fol. 107] (a) The purchase and slaughter of live stock;

(b) The preparation and manufacture of dressed meat and by-products of the slaughtered live stock;

(c) The curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal;

(d) The production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used;

(e) The manufacture, canning, or otherwise preparing for the market, sale, and distribution of certain food supplies other than meats;

(f) The manufacture and sale of various other articles commonly purchased and used either by the producer of live stock, the companies transporting the live stock or dressed meats, or the competitors of the parent companies (these are hereinafter referred to as unrelated commodities);

but leave the complainant to make due proof thereof.

These defendants deny that they or any of them in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them, or otherwise, have made any contract or in any manner or by any act, method, or means have engaged in or are or have been a party to any combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations.

These defendants deny that they or any of them in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them, or otherwise, in any manner or by any act, method, or means have monopolized or attempted to monopolize or have combined or conspired with any other person, persons, firm, or corporation to monopolize any part of the trade or commerce among the several States or with foreign nations.

These defendants deny that they or any of them in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them, or otherwise, acting by and through their principal officers or otherwise, have attempted to dominate, control, and monopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities, referred to in the bill of complaint.

These defendants deny that they or any of them, in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them are attempting to increase and extend said alleged monopoly of the products and commodities referred to in the bill of complaint. These defendants neither admit nor deny that the said parent companies and their subsidiaries artificially control the supply and price of the food supplies of the Nation, but leave the complainant to make due proof thereof.

[fol. 108] "Object to be Attained"

These defendants deny that they have created or obtained any monopoly in the interstate trade or commerce of live stock, meat products, and substitute foods, as charged in the bill of complaint; and these defendants deny that

any monopoly by the defendants named in the bill of complaint, as charged therein, exists. These defendants deny that there has been or is in existence, as charged in the bill of complaint, any contract, combination, or conspiracy in restraint of trade or commerce among the several States.

On the contrary, these defendants allege that they and each of them is in actual and keen competition with each and every so-called parent company and its subsidiaries.

As to the allegations and charges relating to the so-called parent companies, contained in the sections or subdivisions of the bill of complaint, entitled "The nature of the business and method by which it is conducted," "The stockyards," "Conveniences and facilities controlled by stockyards," "Branch houses, route cars, auto trucks, and cold-storage warehouses," "The parent companies' acquisition of above-described facilities and their purpose in doing so," and "Contracts in restraint of trade," these defendants neither admit nor deny the truth thereof, but leave the complainant to make due proof thereof.

"Control of Substitute Foods"

These defendants deny that they, or any of them, have eliminated competition in meat products, as charged in the bill of complaint. These defendants further deny that they or any of them set about to control the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other foods ordinarily handled by wholesale grocers or produce dealers, as charged in the bill of complaint.

These defendants deny that they, or any of them, ever employed their distributive facilities, or otherwise, to fix prices so low as to eliminate competition.

These defendants deny that they, or any of them, have attempted to monopolize commerce in any of the food products mentioned in the bill of complaint, and they deny that any act or acts of these defendants have resulted in the defendants obtaining complete control of any food product, as charged in the bill of complaint.

These defendants deny that unless prevented by a decree of this court the defendants will, within the compass of a few years, control the quantity and price of each article of food found on the American table, as charged in the bill of complaint.

"Extent to Which the Monopolistic Attempts Have Been Successful"

These defendants neither admit nor deny the allegations and charges relating to the so-called parent companies, contained in the section or subdivision of the bill of com- [fol. 109] plaint, entitled as above, but leave the complainant to make due proof thereof, except that these defendants deny that, if the growth of the parent companies and their subsidiaries is permitted to continue unchecked, they will within a few years completely control the various industries in which the defendants are engaged.

"Individual Defendants"

Defendant Fred L. Washburn denies that he is either an officer, director, agent, or employee of any of the so-called parent companies or their so-called subsidiaries, or a large stockholder of any of the said parent companies or their subsidiaries, and he further denies that, in his individual capacity, he is financially interested to a great extent in the stockyards, terminal railways, cattle loan banks, rendering companies, and other companies intimately related with the stockyards as charged in the bill of complaint. He further denies that in addition to his individual holdings he holds stock in any corporation dealing in the so-called substitute foods and so-called unrelated commodities for the benefit of the said parent companies.

Defendant Fred L. Washburn denies that he has or exercises any control over the facilities or instrumentalities of the meat business as charged in the bill of complaint, and he denies that by reason of any interest which he may have in such corporations dealing in so-called substitute foods and so-called unrelated commodities, the so-called parent companies are enabled to carry out the alleged purpose of the combinations charged in the said bill of complaint.

Defendant Fred L. Washburn denies that any interest which he may have in any corporation hereinbefore described, is now or will continue to be a sinister or ever present means of furthering any attempt to monopolize or to perfect a monopoly so that the so-called parent companies or their subsidiaries will have or will ever have complete control either of meat products or of all so-called

substitute foods consumed in the United States as charged in the bill of complaint.

"Subsidiaries Defendants"

These defendants deny that they, or any of them, are subsidiaries owned or controlled by the so-called parent companies, and they further deny that the parent companies, or any of them, has any ownership, interest, or title in and to any of the capital stock or property of any of these defendants.

Conclusion

As to all other averments of said bill of complaint which are not hereinbefore denied or admitted, these defendants make no answer, but pray strict proof.

These defendants allege that the allegations and charges in each of the paragraphs of the bill of complaint are not [fol. 110] sufficiently definite and specific to constitute a violation of law, but are too general and vague.

These defendants allege that the bill of complaint does not allege acts or facts to constitute a violation of law, but that the charges contained in the bill of complaint and in each paragraph thereof are mere statements of legal conclusions.

These defendants deny that complainant is entitled to the relief, or any part thereof, as prayed for in its bill of complaint, and allege that complainant under the allegations of its complaint is without standing or right in this court or in any court of equity.

These defendants deny all and all manner of unlawful acts whatsoever whereof they are in anywise by the said bill of complaint charged; all of which matters and things these defendants are ready and willing to prove as this honorable court shall direct.

These defendants pray in all things the same benefit and advantage of this, their answer, as if they had pleaded or demurred to said bill of complaint.

Wherefore these defendants pray that the bill of complaint herein be dismissed with costs.

Western Meat Company, Oakland Meat and Packing Company, Nevada Packing Company, Fred L. Washburn, by Henry Veeder, Their Solicitor.

[fol. 111] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF NEW ENGLAND DRESSED MEAT & WOOL COMPANY AND OTHERS—Filed February 27, 1920.

The Joint and Several Answer of the Following Corporations, Defendants, to the Bill of Complaint Filed Herein

Name	Organized under laws of—
New England Dressed Meat & Wool Company	Maine.
North Packing & Provision Company	Maine.
The Sperry & Barnes Company	Connecticut.
John P. Squire & Company	Maine.
John P. Squire & Company (Inc.)	Massachusetts.
John P. Squire & Company (Inc.)	Rhode Island.
Springfield Provision Company	New Hampshire.
White, Pevey and Dexter Company	Maine.

These defendants, now and at all times hereafter saving unto themselves all manner of benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties, imperfections, and insufficiencies in the complainant's said bill of complaint contained, for answer thereto or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

These defendants aver that none of the corporations described as parent companies in the bill of complaint has any ownership, interest, or title in and to any of the capital stock or property of any of these defendants, and none of these defendants is a subsidiary of any of said parent companies.

"Court's Jurisdiction"

These defendants neither admit nor deny that the parent companies referred to in the bill of complaint, either directly or through subsidiaries, are engaged in—

[fol. 112] (a) The purchase and slaughter of live stock;

(b) The preparation and manufacture of dressed meat and by-products of the slaughtered live stock;

(c) The curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal;

(d) The production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used;

(e) The manufacture, canning, or otherwise preparing for the market, sale, and distribution of certain food supplies other than meats;

(f) The manufacture and sale of various other articles commonly purchased and used either by the producer of live stock, the companies transporting the live stock or dressed meats, or the competitors of the parent companies (these are hereinafter referred to as unrelated commodities);

but leave the complainant to make due proof thereof.

These defendants deny that they or any of them in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them, or otherwise, have made any contract, or in any manner or by any act, method, or means have engaged in, or are or have been a party to any combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations.

These defendants deny that they or any of them in collusion, agreement or combination with the so-called parent companies or their subsidiaries, or any of them, or otherwise, in any manner or by any act, method, or means have monopolized or attempted to monopolize, or have combined or conspired with any other person, persons, firm or corporation to monopolize any part of the trade or commerce among the several States or with foreign nations.

These defendants deny that they, or any of them, in collusion, agreement, or combination with the so-called parent companies or their subsidiaries, or any of them, or otherwise, acting by and through their principal officers, or otherwise, have attempted to dominate, control, and mo-

nopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities referred to in the bill of complaint.

These defendants deny that they, or any of them, in collusion, agreement, or combination with the so-called parent companies or their subsidiaries, or any of them, are attempting to increase and extend said alleged monopoly of the products and commodities referred to and as charged in the bill of complaint. These defendants neither admit nor deny that the said parent companies and their subsidiaries artificially control the supply and price of the food supplies of the Nation, but leave the complainant to make due proof thereof.

[fol. 113] "Object to be Attained"

These defendants deny that they, or any of them, have created or obtained any monopoly in the interstate trade or commerce of live stock, meat products, and substitute foods, as charged in the bill of complaint; and these defendants deny that any monopoly by the defendants named in the bill of complaint exists, as is charged in the bill of complaint. These defendants deny that there has been or is in existence, as charged in the bill of complaint, any contract, combination, or conspiracy in restraint of trade or commerce among the several States.

On the contrary, these defendants allege that they and each of them is in actual and keen competition with each and every so-called parent company and its subsidiaries.

As to the allegations and charges relating to the so-called parent companies, contained in the sections or subdivisions of the bill of complaint, entitled "The nature of the business and method by which it is conducted;" "The stockyards;" "Conveniences and facilities controlled by stockyards;" "Branch houses, route cars, autotrucks, and cold-storage warehouses;" "The parent companies' acquisition of above described facilities and their purpose in doing so;" and "Contracts in restraint of trade," these defendants neither admit nor deny the truth thereof, but leave the complainant to make due proof thereof.

"Control of Substitute Foods"

These defendants deny that they or any of them, have eliminated competition in meat products, as charged in the

bill of complaint. These defendants further deny that they or any of them set about to control the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other foods ordinarily handled by wholesale grocers or produce dealers, as charged in the bill of complaint.

These defendants deny that they, or any of them, ever employed their distributive facilities or otherwise, to fix prices so low as to eliminate competition.

These defendants deny that they, or any of them, have attempted to monopolize commerce in any of the food products mentioned in the bill of complaint and they deny that any act or acts of these defendants have resulted in the defendants obtaining complete control of any food product, as charged in the bill of complaint.

These defendants deny that unless prevented by a decree of this court, the defendants will, within the compass of a few years, control the quantity and price of each article of food found on the American table, as charged in the bill of complaint.

[fol. 114] "Extent to Which the Monopolistic Attempts Have Been Successful"

These defendants neither admit nor deny the allegations and charges relating to the so-called parent companies, contained in the section or subdivision of the bill of complaint, entitled as above, but leave the complainant to make due proof thereof, except that these defendants deny that, if the growth of the parent companies and their subsidiaries is permitted to continue unchecked, they will within a few years completely control the various industries in which the defendants are engaged.

"Individual Defendants"

These defendants neither admit nor deny the allegations and charges relating to the individual defendants and the so-called parent companies contained in the section or subdivision of the bill of complaint entitled as above, but leave the complainant to make due proof thereof.

"Subsidiaries Defendants"

These defendants deny that they, or any of them, are subsidiaries owned or controlled by the so-called parent com-

panies, and they further deny that the parent companies, or any of them, has any ownership, interest, or title in and to any of the capital stock or property of any of these defendants.

Conclusion

As to all other averments of said bill of complaint which are not hereinbefore denied or admitted, these defendants make no answer, but pray strict proof.

These defendants allege that the allegations and charges in each of the paragraphs of the bill of complaint are not sufficiently definite and specific to constitute a violation of law, but are too general and vague.

These defendants allege that the bill of complaint does not allege acts or facts to constitute a violation of law, but that the charges contained in the bill of complaint and in each paragraph thereof are mere statements of legal conclusions.

These defendants deny that complainant is entitled to the relief, or any part thereof, as prayed for in its bill of complaint, and allege that complainant under the allegations of its complaint is without standing or right in this court or in any court of equity.

These defendants deny all and all manner of unlawful acts whatsoever whereof it is in anywise by the said bill of complaint charged; all of which matters and things these defendants are ready and willing to prove as this honorable court shall direct.

These defendants pray in all things the same benefit and advantage of this, their answer, as if they had pleaded or demurred to the bill of complaint.

[fol. 115] Wherefore these defendants pray that the bill of complaint herein be dismissed with costs.

New England Dressed Meat & Wool Company, North Packing & Provision Company, The Sperry & Barnes Company, John P. Squire & Company, John P. Squire & Company, Inc. (Massachusetts), John P. Squire & Company, Incorporated (Rhode Island), Springfield Provision Company, White, Pevy and Dexter Company, by Henry Veeder, Their Solicitor.

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

STIPULATION AS TO DECREE—Filed February 27, 1920

It is hereby stipulated by and between the parties hereto that the decree hereinafter contained may, upon consent of the parties and without any findings of fact, be entered in this cause.

The corporation and individual defendants, while maintaining the truth of their answers and asserting their innocence of any violation of law in fact or intent, nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, consent to the making and entry of said decree; but this stipulation shall not constitute or be considered as an admission, and the rendition or entry of the decree, or the decree itself, shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States.

The decree above referred to is as follows:

(In the original "Stipulation and Proposed Decree" filed in the Supreme Court of the District of Columbia there was inserted here the proposed decree which was the decree [fol. 116] entered in this cause by said court and is set out in full in the book on pages 1 to 12, both inclusive, but is omitted here to avoid unnecessary repetition.)

Dated Washington, D. C., February 27, 1920.

A. Mitchell Palmer, Attorney General of the United States. Chas. J. Faulkner, Jr., Attorney for Armour and Company (Ill.), Armour & Company (N. J.), Armour & Company (Ky.), Armour & Company (Tex.), Armour & Company (Ltd.) (La.), The Anglo American Provision Company (Ill.), The Colorado Packing and Provision Company (Colo.), Fowler Packing Company (Me.), Hammond Packing Company (Ill.), The New York Butchers Dressed Meat Company (N. Y.), Atlantic Hotel Supply Company (Inc.), (N. Y.); J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurence H. Armour, Arthur

Meeker, Robert J. Dunham, F. Edson White, George M. Willets, Frederick W. Cross, George B. Robbins.

Henry Veeder, Attorney for Swift & Company (Ill.), Swift & Company (W. Va.), Swift & Company (Inc.) (Ky.), Swift & Company (Ltd.) (La.), Swift & Company (Me.), Swift Beef Company (Me.), United Dressed Beef Co. of New York (N. Y.), J. J. Harrington & Company (Inc.) N. Y., Bimbler Company (N. J.), The G. H. Hammond Company (Mich.), Omaha Packing Company (Ky.), Plankinton Packing Company (Wis.), Sturtevant & Haley, Beef & Supply Company (Mass.), E. K. Pond Packing Company (Ill.), Van Wagenen & Schickhaus Company (N. J.), Western Packing Company (Colo.), Hammond Beef Company (Mich.), Omaha Meat Company (Calif.), A. Canfield Commission Company (N. J.), H. C. Derby Company (N. Y.), Metropolitan Hotel Supply Company (Me.), Vermont Supply Company (Mass.), The Hotchkiss Beef Co. (N. Y.), New England Dressed Meat & Wool Company (Me.), North Packing & Provision Company (Me.), Sperry & Barnes Company (Conn.), John P. Squire & Company (Me.), John P. Squire & Company (Inc.) (Mass.), John P. Squire & Company (Incorporated) (R. I.), Springfield Provision Company (N. H.), White, Pevey & Dexter Company (Me.), Louis F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, Jr., Harold H. Swift, Alden B. Swift, George H. Swift, Laurence A. Carton, Frank S. Hayward, Charles A. Peacock, Wilfred W. Sherman, Wellington Leavitt, John M. Chaplin, William B. Traynor.

M. W. Borders, Attorney for Morris & Company (Me.), Morris Packing Company (Me.), Morris & Company (N. J.), Morris & Company (La.), Morris & Company of Pennsylvania (Pa.), Jo- [fol. 117] seph Stern & Sons, Inc. (N. Y.), Brooklyn Beef & Provision Co. (N. Y.), Condit Beef and Provision Company (N. J.), Corwin Wilde Company (Mass.), Donnelly & Company, Inc. (Mass.),

National Hotel Supply Company (Ill.), Chamberlain & Company, Inc. (Mass.), J. M. Wilson & Company (Mass.), Middletown Beef and Provision Company (Mass.), Glenn & Anderson Co. (Ill.), Edward Morris, Nelson Morris, Louis H. Heymann, Charles M. McFarlane, Harry A. Timmins.

Jewell P. Lightfoot, Attorney for Wilson & Co., Inc. (N. Y.), Wilson & Co. (N. J.), Wilson & Co., Inc. of Calif. (Nev.), Wilson & Co., Inc. of Louisiana (La.), Wilson & Co., Inc., of Okla. (Okla.), South Dakota Provision Co. (S. D.), Gotham Hotel Supply Co., Inc. (N. Y.), Standard Beef Co. (N. Y.), Stiefel-O'Mara Co., Inc. (N. Y.), Drexel Packing Co. (N. Y.), Albert Lea Packing Co., (Va.), Mississippi Packing Co., Inc. (Va.), Morton-Gregson Co. (Del.), Paul O. Reymann Co. (W. Va.), Standard Provision Co. (N. J.), Central Products Corporation (Va.), Thomas E. Wilson, Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D. Hopkins, Adolph E. Peterson, George H. Cowan, William C. Buethe, Carl F. Burrell, James C. Good.

Thomas Creigh, Attorney for the Cudahy Packing Company (Me.), Cudahy Packing Company of Nebraska (Neb.), Cudahy Packing Company of Alabama (Ala.), Cudahy Packing Company of Louisiana, Ltd. (La.), Nagle Packing Company (N. J.), Edward A. Cudahy, Sr., Edward A. Cudahy, Jr., Guy C. Shepard, John E. Wagner, Andrew W. Anderson, Emil A. Strauss, Frank E. Wilhelm, George Marples.

Henry Veeder, Attorney for Western Meat Company (Cal.).

Henry Veeder, Attorney for Oakland Meat and Packing Company (Calif.).

Henry Veeder, Attorney for Nevada Packing Company (Nev.).

Henry Veeder, Attorney for Fred L. Washburn.

[fol. 118] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

DECREE AND CONSENTS—Filed February 27, 1920

This cause having come on to be heard on this 27th day of February, in the year 1920, before the Hon. Walter I. McCoy, Chief Justice, and the petitioner having appeared by the Hon. A. Mitchell Palmer, Attorney General of the United States, by its district attorney, John E. Laskey, and by Isidor J. Kresel, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General thereto duly authorized, and having moved the court for an injunction in accordance with the prayer of its petition; and it appearing to the court that the allegations of the petitioner state a cause of action against the defendants under the provisions of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental or additional thereto, and that the court has jurisdiction of the persons and the subject matter; and the several defendants having accepted service of process and having appeared and filed answers to the petition, which answers are on file in the office of the clerk of this court; and the parties having this day entered into a stipulation in this action, which stipulation is on file in the office of the clerk of this court, and from which it appears, among other things, that while the defendants and each of them, maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States.

Now, upon the petition, the answers of the defendants, and the aforementioned stipulation and consents of the

parties, all on file in the office of the clerk of this court, and on motion of the petitioner, it is ordered, adjudged, and decreed as follows:

First. That the corporation defendants and each of them be, and they are hereby, jointly and severally perpetually [fol. 119] enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, in any manner maintaining or entering into any contract, combination, or conspiracy with each other, or with any other person or persons, in restraint or trade or commerce among the several States, or from either directly or indirectly, by themselves or through their officers, directors, agents, or servants, either jointly or severally monopolizing or attempting to monopolize or combining or conspiring with each other, or with any other person or persons to monopolize any part of such trade or commerce.

Second. That the defendants and each of them be and they are hereby, jointly and severally perpetually enjoined and restrained from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States, or in any stockyard terminal railroad in the United States, or in any stockyard market newspaper or stockyard market journal published in the United States, except in so far as the court may permit any of the individual defendants to retain any such interests upon the conditions and in such circumstances as are provided for in paragraph tenth of this decree; and said defendants and each of them are hereby further enjoined and restrained from accepting or permitting to be given directly or indirectly, on any pretext whatever, to any of them, or to any of their officers, directors, servants, or employees, for the use and benefit of the corporation defendants or any of them, any capital stock or other interest in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper or stockyard market journal.

Third. That the corporation defendants and each of them and their successors and assigns be, and they are hereby,

perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, through any device or arrangement whatsoever, using or permitting any other person, firm, or corporation to use their distributive system and facilities, including their branch houses, route cars, and auto trucks, or any of them, in any manner for the purchase, sale, handling, transporting, distributing, or otherwise dealing in any of the articles or commodities named and described in paragraph fourth of this decree, except in so far as permitted in said paragraph fourth, and except refrigerator cars when in good faith leased to common carriers, or furnished to them for their use as common carriers.

The corporation defendants or any of them may from time to time lease, sell or otherwise dispose of any of the items of their distributive system free from any of the restrictions of this decree when they have a surplusage thereof or when such items have become obsolete or are otherwise not required for the business of the defendants or any of them. But no sale, lease, or other disposition of a substantial part of defendants' respective distributive systems or such distributive system as an entirety shall be [fol. 120] made without submitting the same to the court for the court's investigation and determination as to whether said proposed sale, lease, or other disposition is in accordance with the spirit and purpose of this decree, and without notice of the application for such approval first given to the Attorney General. Nothing herein contained shall be construed to prohibit the defendants or any of them from mortgaging or otherwise creating liens on said distributive system or parts thereof.

Fourth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, either for domestic trade or for export trade, the manufacturing, jobbing, selling, transporting (except as common carriers), distributing, or otherwise dealing in any of the following products or commodities, except when such products or commodities are purchased, transported, or used (1) as supplies in operating

their packing houses, branch houses, or other facilities used by them, or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences, primarily for the benefit of their employees; or (4) in combination with meat, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Canned oysters.	Canned salmon.
Canned mackerel.	Canned sardines.
Bulk mackerel.	Canned shrimp.
Bulk, canned, and cured herring.	Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Asparagus.	Potatoes.
Navy beans.	Tomatoes.
Lima beans.	Celery.
Peas.	Garlic.
Beets.	Horse-radish.
Corn.	Pumpkins.
Okra.	

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mincemeat, to wit:

Ginger.	Figs.
Cherries.	Gooseberries.
Apple butter.	Oranges.
Apricots.	Strawberries.
Blackberries.	Apples.
Peaches.	Prunes.
Pineapple.	Raisins.
Raspberries.	Dates.
Currents.	

[fol. 121] 4. Confectionery, sirups, soda-fountain supplies and sirups and soft drinks (grape juice is not included in

this paragraph 4; see paragraph 14), including therein, but in nowise limiting the foregoing general description, the following, to wit:

Apple cider.
Cherry juice.
Coca Cola.
Creme de menthe.
Crushed nut frappe.
Ginger ale.
Green pineapple sirup.
Lemon extract.
Marshmallow topping.
Orange extract.
Root beer.
Vanilla extra.
Vip fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.
Chili sauce.
Cinnamon.
Cloves.
Mustard.
Mustard seed.
Olives.
Oyster cocktail sauce.
Pepper.
Pickles.
Spinach chili.
Tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit:

Almonds.
Pecans.
Walnuts.

But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

11. Cereals, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Grits.
Oats.
Hominy.
Hominy feed.
Horse feed.
Brewers' flakes.
Brewers' grit.
Ground corn.
Cracked corn.
Crushed white oats.
Feed barley.
Feed meal.
Feed wheat.
Rolled oats.

Brewers' meal.
Buckwheat.
Canned hominy.
Clipped oats.
Corn grits.
Ground meal.
Ground oats.
Standard middlings.
Standard spring brand.
Spaghetti.
Vermicelli.
Macaroni.
Corn flakes.
Wheat foods.

12. Grain.

13. Miscellaneous articles, to wit:

Cigars
China.
Furniture.
Bluing, starch.
Fence posts and wire fences.
Alfalfa meal.
Babbitt.
Bar iron.
Binding and twine.
Brass castings for heavy ordnance.
Brick.
Builders' hardware.
Bumping posts for railroads.
Cement, lime, plaster.
Doors and windows.
Dried brewers' grains.
Lath.
Pitting and fruit handling machinery.
Roofing.
Sand and gravel.
Shingles.
Soda fountains or parts thereof.
Structural steel.
Tile.
Waste.

14. Grape juice.

[fol. 122] And the corporation defendants and each of them be, and they are hereby, further perpetually enjoined and restrained from owning, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants any capital stock or other interest whatsoever in any corporation, firm, or association except common carriers, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities.

Fifth. That the individual defendants, and each of them, be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by

themselves or through their agents, servants, or employees, owning voting stock which in the aggregate amounts to 50 per cent or more of the voting stock of any corporation, except common carriers, or any interest in such corporation resulting in a voting power amounting to 50 per cent or more of the total voting power of such corporation, or which interest by any device gives to any such defendant or defendants a voting power of 50 per cent or more in any such corporation, or a half interest or more in any firm or association which corporation, firm, or association may be, in the United States, in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the following products or commodities, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Canned oysters.
Canned mackerel.
Bulk mackerel.
Bulk, canned, and cured herring.
Canned salmon.
Canned sardines.
Canned shrimp.
Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Asparagus.
Navy beans.
Lima beans.
Peas.
Beets.
Corn.
Okra.
Potatoes.
Tomatoes.
Celery.
Garlic.
Horse radish.
Pumpkins.

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mince meat, to wit:

Ginger.
Cherries.
Apple butter.
Apricots.
Blackberries.
Figs.
Gooseberries.
Oranges.
Strawberries.
Apples.

Peaches.
Pineapples.
Raspberries.
Currants.
Prunes.
Raisins.
Dates.

[fol. 123] 4. Confectionery, sirups, soda fountain supplies, and sirups and soft drinks not including grape juice, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Apple cider.
Cherry juice.
Coca Cola.
Creme de menthe.
Crushed nut frappe.
Ginger ale.
Green pineaple sirup.
Lemon extract.
Marshmallow topping.
Orange extract.
Root beer.
Vanilla extract.
Vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.
Chili sauce.
Cinnamon.
Cloves.
Mustard.
Mustard seed.
Olives.
Oyster cocktail sauce.
Pepper.
Pickles.
Spinace chilli.
Tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit:

Almonds.
Pecans.
Walnuts.

But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

And further perpetually enjoining and restraining said individual defendants and each of them from individually or jointly, either directly or indirectly, by themselves or through their agents, servants, or employees, adopting any device or arrangement which by reason of the relation of

said individual defendants or any of them to the corporation defendants or any of them would have the purpose or effect of giving to such business of dealing in the articles hereinabove in this paragraph mentioned and described, in which business such individuals or any of them may be substantially interested, an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing system.

Sixth. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, owning and operating or conducting, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants, any retail meat markets in the United States: Provided, however, That nothing contained in this decree shall prohbit said defendants or any of them from continuing to conduct the retail meat markets located at their several plants and maintained by said defendants primarily for the accommodation of their own employees as long as said retail meat market shall be continued to be operated for that purpose.

[fol. 124] Seventh. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from owning, directly or indirectly jointly or severally, by themselves or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in public cold-storage warehouses in the United States; provided, however, that nothing herein contained shall be construed to prevent the defendants or any of them from owning capital stock or other interests in any corporation, firm, or association owning or operating, or from themselves owning or operating, the public cold-storage warehouses now maintained by the defendants or any of them at stockyards where said defendants or any of them now maintain packing plants, nor to prevent any of said defendants, directly or indirectly, from establishing, owning, maintaining, or leasing necessary cold-storage facilities or space required in good faith for the storage of commodities in which they or any of them may be interested, nor from renting space in any cold-storage warehouse directly or indirectly owned or leased by any of them to the public whenever such space

is not in good faith required or needed by the defendants for their own use, nor from storing products for the public whenever the space used for that purpose is not in good faith required by the defendants for their own use.

Eighth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from engaging in the United States, either directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, in the business of buying, collecting, selling, transporting, except as common carriers, distributing or otherwise dealing in fresh milk and cream, and further perpetually enjoining and restraining said defendants and each of them by themselves or through their directors, officers, agents, and servants, from either directly or indirectly owning any capital stock or other interest in any corporation, firm, or association engaged in the business of buying, collecting, selling, transporting (except as common carriers), distributing, or otherwise dealing in fresh milk or cream; provided, however, that nothing herein contained shall be construed as preventing the corporation defendants or their subsidiaries from buying, collecting, and transporting fresh milk and cream to be used by them or any of them in manufacturing condensed or evaporated or powdered milk or oleomargine or other butter substitutes, or butter, ice cream, cheese, or buttermilk, or to be used as feed or in combination with any commodity not specifically mentioned and described in paragraph fourth hereof; and further provided that nothing herein contained shall be construed as preventing said defendants from selling or otherwise disposing of milk and cream bought or collected for manufacture, when such sale or disposition is necessary to avoid waste.

Ninth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, jointly or severally, by themselves or through their officers, directors, agents, or servants, engaging in, carrying on, or using any illegal trade practices of any nature what-[fol. 125] soever in relation to the conduct of any business in which they or any of them may be engaged.

Tenth. That within 90 days after the entry of this decree such of the defendants as have interests in public stockyard market companies, stockyard terminal railroads, or market

newspapers, shall file in this court, for the court's approval, a plan or plans for divesting themselves of all ownership or interest in: (1) public stockyard market companies; (2) stockyard terminal railroads; (3) market newspapers; provided, however, that the court may, in the event that it deems such provision necessary in order to enable the defendants to divest themselves of their interests in public stockyard market companies and stockyard terminal railroads, upon reasonable terms, permit the individual defendants, or some of them, to retain an interest by way of stock ownership, or otherwise, in any public stockyard market company or stockyard terminal railroad, or in any corporation organized to take over such public stockyard market companies or stockyard terminal railroads or the stock thereof; but no defendant or defendants shall at any time, either individually or jointly, own a controlling interest in any such stockyards or stockyard terminal railroads. Within such period of time after the entry of this decree and the approval of said plan or plans as the court may determine, the defendants shall, in good faith, completely divest themselves of all such ownership or interests in public stockyard market companies, stockyard terminal railroads, and market newspapers. If, within the time so fixed, the defendants shall not have disposed of said interests ordered by the court to be disposed of, and the court upon application shall determine that the defendants have been unable, despite due diligence, to dispose of the same upon reasonable terms, the court may extend the time during which such ownership, control, or interest may continue until the same can be disposed of.

Eleventh. That immediately upon the entry of this decree the defendants shall in good faith and with due diligence proceed to dispose of their interests in, and shall completely divest themselves (to the extent required by this decree) of all ownership of or interest in all public cold-storage warehouses and retail meat markets; but in no event shall the defendants, or any of them, make final disposition of any of their interests in such public cold-storage warehouses and retail meat markets without first obtaining the court's approval to such final disposition. If, within nine months after the entry of this decree, the defendants shall not have finally disposed of their interests in public cold-storage warehouses and retail meat markets, the Attorney General

may apply to the court for an order specifying the time within which the defendants shall finally dispose of all said interests.

Twelfth. That immediately upon the entry of this decree the defendants and each of them shall commence to dispose of such commodities owned or handled by them as are described in paragraphs fourth and fifth of this decree and which are to be disposed of by them under this decree, and shall likewise immediately upon the entry of this decree commence to divest themselves of all interests which are to [fol. 126] be disposed of by them as and to the extent required by this decree in firms, corporations, and associations, including departments of the business of any of the corporation defendants when any of such departments is sold as a going concern, manufacturing, selling, or otherwise dealing in any of the commodities so mentioned and described in paragraphs fourth and fifth of this decree, and shall continue in good faith to dispose of said commodities required to be disposed of hereunder, and to divest themselves of such interests required to be disposed of hereunder as rapidly as may be consistent with the nature of the business and the seasonal nature of the merchandise involved, and that in any event the defendants and each of them shall completely dispose of said commodities and shall cease to manufacture, job, sell, transport, except as common carriers, distribute, or otherwise deal in the same, and shall completely divest themselves of said interests within two years from the date of the entry of this decree; provided, however, to the end that the provisions of this decree may be complied with, the approval of the court shall be obtained prior to the final disposition of said interests in firms, corporations, or associations manufacturing, selling, or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree. At any time within said two years the Attorney General may apply to the court for an order or orders to compel the defendants, and each of them, to make report to the court as to the progress being made by them in disposing of said commodities and in divesting themselves of said interests.

Thirteenth. That the purchaser or purchasers of the defendants' interests in any stockyard, shall as a part of said purchase, agree with such of the defendants as now main-

tain packing plants in said stockyards that for a period of at least 10 years after the date when such purchase shall be consummated said purchasers, their successors or assigns, will continue to maintain and efficiently operate such stockyards and each of them, and such of said defendants as now maintain packing plants at any of said stockyards shall agree with said purchasers that during the same period of 10 years said defendants, their successors or assigns, will continue to maintain and operate said packing plants at the points where the same are now located, unless strikes, shortage of supplies, or other causes beyond the control of either the purchasers, the stockyard companies, or said defendants shall prevent the carrying out of said agreement. Performance by either party shall be a condition concurrent to performance by the other.

Fourteenth. That nothing in this decree contained shall be construed to prohibit anything that may be otherwise lawfully done by the defendants or any of them in the United States in connection with or for the purpose of export trade or foreign commerce or business of the defendants; provided, however, that nothing in this paragraph contained shall limit the effect of the injunction contained in paragraphs fourth and fifth of this decree.

Fifteenth. That nothing contained in this decree shall be held to preclude the petitioner from proceeding against any or all of the defendants, either civilly or criminally, for any [fol. 127] violation of any law in connection with the carrying on by them of the business of buying and selling poultry, butter, eggs, and cheese, or any other business or activity not specifically mentioned in this decree; nor shall anything contained herein prejudice the Government in any such proceeding; nor shall this decree interfere with or prejudice any legal rights, business, or activity of the defendants, or any of them, not prohibited or covered by this decree.

Sixteenth. That for the purpose of (1) enabling the petitioner to ascertain whether the defendants are in good faith carrying out the terms of this decree; and (2) for the purpose of enabling the Attorney General to determine and advise the court whether in any transaction consummated or begun at any time prior to the entry of this decree the defendants, or any of them, have retained and now retain such an interest in or control over any public stockyard

market company, stockyard terminal railroad, stockyard market newspaper, stockyard market journal, cold-storage warehouse, retail meat market, or corporation, firm, or association, manufacturing, jobbing, selling, distributing, transporting (except as common carriers), or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, which would constitute a violation of this decree if the retention of such interest or control had been the result of a transaction consummated or begun subsequent to the date of the entry of this decree; and (3) for the further purpose of enabling the Attorney General to determine and advise the court whether any leases, contracts, or arrangements concerning their, or any of their, distributing systems made or entered into by the defendants, or any of them, prior to the entry of this decree, and in force on the day when it shall be entered, are in violation of the terms thereof, then, in the event that the Attorney General in writing notifies the defendant or defendants concerned with respect to such alleged violation, reciting in reasonably specific terms the nature thereof, the corporation defendants are hereby directed to make full and complete discovery to the petitioner with respect thereto, and the corporation defendants are further directed to submit to the Attorney General or to any Assistant Attorney General by him duly authorized all of their books, records, correspondence, or other documents in so far as the same refer to the alleged violation, and to furnish all information concerning the same.

Seventeenth. That all sales, transfers, or other disposition made by any of the defendants since the first day of October, nineteen hundred and nineteen, of any of their interests in public stock yard market companies, stock yard terminal railroads, stock yard newspapers or journals, public cold-storage warehouses and retail meat markets, or incorporations, firms, or associations manufacturing, jobbing, selling, transporting, except as common carriers, distributing or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, and all leases, contracts, or arrangements or other disposals made by any of the defendants since the first of October, nineteen hundred and nineteen, affecting their de- [fol. 128] livery systems, shall be submitted by the defendants to the court for its investigation and determination as

to whether the same were made in accordance with the spirit and purpose of this decree, in the same manner and with the same force and effect as though the said sales, dispositions, leases, contracts, or arrangements had been made subsequent to the entry of this decree.

Eighteenth. That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application *with* the parties may make with respect to this decree.

Walter I. McCoy, Chief Justice.

February 27, 1920.

The defendants Western Meat Company, Oakland Meat & Packing Company, Nevada Packing Company, and Fred L. Washburn, appear herein generally by Henry Veeder, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

Henry Veeder, Attorney for Above-named Defendants.

Dated 27th day of February, 1920.

The defendants Wilson & Co., Inc., (N. Y.); Wilson & Co. (N. J.), Wilson & Co., Inc., of Calif. (Nev.); Wilson and Co., Inc., of Louisiana (La.); Wilson & Co., Inc., of Okla. (Oklahoma); South Dakota Provision Co., Gotham Hotel Supply Co., Inc.; Standard Beef Co.; Stiefel-O'Mara Co., Inc.; Drexl Packing Co.; Albert Lea Packing Co., Inc.; Mississippi Packing Co., Inc.; Morton-Gregson Co.; Paul O. Reymann Co.; Standard Provision Co., Central Products Corporation, Thomas E. Wilson, Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D. Hopkins, Adolph E. Peterson, George H. Cowan, William C. Buethe, Carl F. Burrell, James C. Good, appear herein generally by Jewel P. Lightfoot, their attorney, and do hereby consent that the fore-

going decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

Jewel P. Lightfoot, Attorney for Above-named Defendants.

Dated Washington, February 27, 1920.

The defendants the Cudahy Packing Company (Me.), Cudahy Packing Company of Nebraska, Cudahy Packing Company of Alabama, Cudahy Packing Company of Louisiana, Ltd., Nagel Packing Company, Edward A. Cudahy, [fol. 129] sr., Edward A. Cudahy, jr., Guy C. Shepard, John E. Wagner, Andrew W. Anderson, Emil A. Strauss, Frank E. Wilhelm, and George Marples, appear herein generally by Thomas Creigh, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in the cause without further notice.

Thomas Creigh, Attorney for Above-named Defendants.

Dated Washington, February 27, 1920.

The defendants Armour and Company (Ill.), Armour & Company (N. J.), Armour & Company (Ky.), Armour & Company (Tex.), Armour & Company, Ltd. (La.), The Anglo American Provision Company, The Colorado Packing and Provision Company, Fowler Packing Company, Hammond Packing Company, The New York Butchers Dressed Meat Company, Atlantic Hotel Supply Company, Inc., J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurence H. Armour, Arthur Meeker, Robert J. Dunham, F. Edson White, George M. Willetts, Frederick W. Croll, and George B. Robbins, appear herein generally by Charles J. Faulkner, jr., their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

Charles J. Faulkner, Jr., Attorney for Above-named Defendants.

Dated Washington, February 27, 1920.

The defendants Morris & Company (Me.), Morris Packing Company (Me.), Morris & Company (N. J.), Morris &

Company (La.), Morris & Company of Pennsylvania (Pa.), Joseph Stern & Sons, Inc., Brooklyn Beef & Provision Co., Condit Beef and Provision Company, Corwin, Wilde Company, Donnelly & Company, Inc., National Hotel Supply Company, Camberlain & Company, Inc., J. M. Wilson Company, Middletown Beef and Provision Company, Glenn & Anderson Co., Edward Morris, Nelson Morris, Louis H. Heymann, Charles M. Macfarlane and H. A. Timmins, appear herein generally by M. W. Borders, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

M. W. Borders, Attorney for Above-named Defendants.

Dated Washington, February 27, 1920.

The defendants Swift and Company (Ill.), Swift and Company (W. Va.), Swift and Company, Inc. (Ky.), Swift and Company, Ltd. (La.), Swift and Company (Me.), Swift Beef Company (Me.), United Dressed Beef Co. of New York, J. J. Harrington and Company, Inc., Bimbler Company, The G. H. Hammond Company, Omaha Packing Company, Plankinton Packing Company, Sturtevant & Haley Beef & Supply Company, E. K. Pond Packing Company, [fol. 130] Van Wagener and Schickhaus Company, Western Packing Company, Hammond Beef Company, Omaha Meat Company, A. Canfield Commission Company, H. C. Derby Company, Metropolitan Hotel Supply Company, Vermont Supply Company, The Hotchkiss Beef Co., New England Dressed Meat & Wool Company, North Packing & Provision Company, The Sperry & Barnes Company, John P. Squire & Company (Me.), John P. Squire & Company, Inc. (Mass.), John P. Squire & Company, Inc. (R. I.), Springfield Provision Company, White, Pevey and Dexter Company, Louis F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, Jr., Harold H. Swift, Alden B. Swift, George H. Swift, Laurence A. Carton, Frank S. Hayward, Charles A. Peacock, Wilfred W. Sherman, Wellington Leavitt, John M. Chaplin, and William B. Traynor, appear herein generally by Henry Veeder, their attorney, and do hereby consent that the foregoing decree may be entered

herein upon the stipulation of the parties filed in this cause without further notice.

Henry Veeder, Attorney for the Above-named Defendants.

Dated Washington, February 27, 1920.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

PETITION OF SOUTHERN WHOLESALE GROCERS ASSOCIATION AND OTHERS FOR LEAVE TO INTERVENE—Filed September 10, 1921

* * * * * * *

To the Honorable the Judges of the Supreme Court of the District of Columbia:

Come now the Southern Wholesale Grocers Association, a corporation duly and legally incorporated under the laws of the State of Tennessee, and a citizen of the State of Tennessee; Henry Sears & Company, a corporation of the Commonwealth of Massachusetts; John Hoffman & Sons Company, a corporation of the State of Wisconsin; Mason Ehrman & Company, a corporation of the State of Oregon; J. M. Radford Grocery Company, a corporation of the State of Texas; Southern Distributing Company, a corporation of the State of Virginia; Hall Grocery Company, a corporaton of the State of Arkansas; Albert Mackie & Company, Ltd. and the Hicks Company, corporations of the State of Louisiana; W. D. Cleveland & Sons, a corporation of the State of Texas; Rappides Grocery Company, Inc., a corporation of the State of Louisiana; Oliver Finnie Grocery Company, a corporation of the State of Tennessee, and move the Court for leave to intervene in the above-styled case, and represent to the Court that they are interested in the subject matter of this suit and that their interest arises as follows:

Southern Wholesale Grocers Association is an association of wholesale grocers, with membership in excess of 2,000, whose members reside in at least 40 of the States of [fol. 131] the Union, and such members are engaged in the handling and selling all commodities usually handled and dealt in by wholesale grocers,

The other petitioners herein are themselves wholesale grocers doing business in their respective communities and are directly interested in the matter of this suit and this petition is brought on behalf of Wholesale Grocers throughout the United States who are in the same position and bear the same relation to this cause as petitioners herein other than the Wholesale Grocers Association. Said Wholesale Grocers, petitioners herein, are each and all buying, selling, handling and dealing in the commodities other than meats described in and affected by the decree heretofore entered in this cause.

Prior to the 27th day of February, 1920, the date on which the original decree was entered in this cause, petitioner Southern Wholesale Grocers Association, the other petitioners herein and other wholesale grocers throughout the United States similarly situated and interested as petitioners herein other than the Wholesale Grocers Association, presented facts to the Federal Trade Commission of the United States showing and tending to show that the defendants in this cause were guilty of unfair methods of competition in violation of Section 5 of the Act of Congress creating said Commission and in violation of the Anti-Trust Laws and obstructing competition and which tended to create a monopoly in the nation's food. Said Federal Trade Commission had, prior to February 27, 1920, made and filed a report finding that said defendants had engaged in and were engaged in practices so violative of the laws of the United States and which practices created and tended to create a monopoly.

Petitioners also prior to said last named date consulted with the Department of Justice and made suggestions as to the form which said decree of February 27, 1920, subsequently took and petitioners, through their counsel, became in fact, although not in name, parties participating in the proceedings, leading up to the entry of said original decree, and that by the entry of said decree the controversy theretofore existing between petitioners and those similarly situated on the one side and the defendants in this cause on the other, were largely adjusted and the petitioners respectfully show that said decree was and is just, legal and proper and prescribes lawful, fair and appropriate restrictions on the conduct of the defendants.

Petitioners in July or August, 1919, brought a complaint against the Director General of Railroads and all the railroads of the United States before the Interstate Commerce Commission, alleging and charging that said railroads yielding to the power of the packers, defendants herein, had accorded such packers rates and privileges unjust, unreasonable and unduly preferential in violation of the Acts to Regulate Commerce, and that petitioners were in direct competition with said packers, all of which allegations were true as appears from said complaint on file with the Interstate Commerce Commission, a copy of which will be exhibited to the Court whenever necessary.

Petitioners herein, after the entry of said original decree, [fol. 132] recognized the propriety and efficacy thereof and suspended the prosecution of said complaint before the Interstate Commerce Commission.

Petitioners further show that a complaint of the National Wholesale Grocers Association, an association with purposes similar to the Southern Wholesale Grocers Association, against the railroads was brought to and heretofore pending before the Interstate Commerce Commission similar to that brought by the Southern Wholesale Grocers Association and consolidated therewith, numbered on the docket of the Interstate Commerce Commission as Docket No. 10745, and docketed No. 10745—Sub. No. 1. Some of the defendants to the decree in this case and all of the principal defendants herein, intervened in said proceeding before the Interstate Commerce Commission and in their interventions relied upon the decree herein as the reason why the complaints before the Interstate Commerce Commission should not be granted.

When the decree was entered in this cause your petitioners herein being, as aforesaid, by representation parties recognized that said decree by eliminating the unfair and unlawful practices of the defendants herein in this case before the Interstate Commerce Commission did not themselves further prosecute their complaint nor did these petitioners take any proceeding or attempt to take any action to enforce the findings of the Federal Trade Commission.

Thereafter on the 22nd day of June, 1921, the Interstate Commerce Commission decided said two complaints and in substance denied the relief asked for therein. In

the course of the decision of said Commission the decree in this case was referred to. Petitioners respectfully call attention to the opinion of the Interstate Commerce Commission, which is reported in Vol. 62, page 375 et seq. of the opinions of that Commission.

Petitioners believe, and believing so allege, that complainants in said petition to the Interstate Commerce Commission would have obtained the relief sought by said complaints had not this Court already granted the relief by the decree of February 27, 1920. Should this Court now set aside or materially lessen the force of its decree heretofore entered, the result would be to give the defendants herein an unjust and inequitable advantage over petitioners and others in like situation.

To set aside or weaken the decree heretofore entered in this cause would be contrary to the form and purposes thereof and would deprive petitioners of their rights and petitioners have no relief except in this Court and in this cause, petitioners having by reliance on said decree lost advantages and rights which they had prior to the entry thereof and defendants herein having obtained a cessation of the prosecution of petitioners' complaint before the Interstate Commerce Commission and having been freed from any attempt by petitioners to make effective the finding of the Federal Trade Commission defendants are estopped from seeking or obtaining any modification of the decree which perpetually enjoined them from the unlawful acts of which they were guilty, to the injury of your petitioners herein. Only by the power of this Court of Equity [fol. 133] can the rights of the petitioners be protected and petitioners have a direct and special interest in the issues in this case and in the maintenance of said decree. Petitioners present herewith their intervention herein.

Wherefore the four named intervening petitioners, being otherwise remediless, ask the Court to make and cause to be entered herein an order permitting them to file said intervention presented herewith to the end that petitioners may fully plead their respective interests, be notified of all hearings subsequently had herein and be heard on any

motion or proceeding seeking to change, weaken or otherwise modify the original decree in this cause.

Hoke Smith, Washington, D. C.; Edgar Watkins, Fourth National Bank Bldg., Atlanta, Ga., Attorneys for Petitioner.

Duly sworn to by Joseph H. McLaurin. Jurat omitted in printing.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ORDER GRANTING PETITION TO INTERVENE—Filed September 10, 1921

* * * * * * * *

This cause coming on to be heard on the application of Southern Wholesale Grocers' Association, Henry G. Sears Company, Mason Ehrman & Co., John Hoffman & Sons Company, J. M. Radford Grocery Co., Southern Distributing Co., Oliver Finnie Grocery Company, Hall Grocery Co., Albert Mackie & Co., The Hicks Co., W. D. Cleveland & Sons and Rapides Grocery Co., interveners in this suit to be made parties, and it appearing to the court that said petitioners have an interest in the subject matter of this suit sufficient to enable them to become parties thereto, it [fol. 134] is therefore ordered, adjudged and decreed that said petitioners have leave to intervene in said suit; this order to be without prejudice in any proceeding heretofore had in this cause.

A. A. Hoehling, Justice.

September 10, 1921.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

INTERVENING PETITION OF SOUTHERN WHOLESALE GROCERS ASSOCIATION AND OTHERS—Filed September 10, 1921

* * * * * * * *

To the Honorable the Judges of said Court:

Come now your interveners, Southern Wholesale Grocers Association, Henry G. Sears Company, John Hoffman

& Sons Company, Mason Ehrman & Company, J. M. Radford Grocery Company, Southern Distributing Company, Hall Grocery Company, Albert Mackie & Company, Ltd., The Hicks Company, W. D. Cleveland & Sons, Rappides Grocery Company. Oliver Finnie Grocery Company, complaining of the defendants named in the decree in the above-styled cause, hereinafter called defendants, and represent and show unto your Honor:

1. Southern Wholesale Grocers Association is a corporation duly and legally incorporated and existing under the laws of the State of Tennessee, with an office and place of business from which it transacts its business in Jacksonville, in the State of Florida.

2. Intervener Henry G. Sears Company is a corporation incorporated under the laws of the State of Massachusetts, doing business in Holyoke, in said State.

3. Intervener John Hoffman & Sons Company, is a corporation incorporated under the laws of the State of Wisconsin and doing business at Milwaukee, in said State.

4. Intervener, Mason Ehrman & Company, is a corporation incorporated under the laws of the State of Oregon, doing business at Portland, in said State.

5. Intervener J. M. Radford Grocery Company is a corporation incorporated under the laws of the State of Texas, doing business at Aberdeen, in said State.

6. Intervener Southern Distributing Company, is a corporation incorporated under the laws of the State of Virginia, doing business at Norfolk, in said State.

7. Intervener Hall Grocery Company is a corporation incorporated under the laws of the State of Arkansas, doing business at Pine Bluff, in said State.

8. Interveners The Albert Mackie & Company, Ltd., and the Hicks Company, corporations incorporated under the laws of the State of Louisiana, doing business respectively at New Orleans and Shreveport, in said State.

[fol. 135] 9. Intervener W. D. Cleveland & Sons, is a corporation incorporated under the laws of the State of Texas, doing business at Houston, in said State.

10. Intervener Rappides Grocery Company is a corporation incorporatd under the laws of the State of Louisiana, doing business at Alexandria, in said State.

11. Intervener Oliver Finnie Company is a corporation incorporated under the laws of the State of Tennessee, doing business at Memphis, in said State.

12. Southern Wholesale Grocers Association is an association without capital stock, not engaged in business but composed of wholesale grocers located in different parts of the United States, its members being corporations, partnerships and individuals engaged in buying and selling the food products in wholesale quantities described in the decree entered in this cause on the 27th day of February, 1920. The other interveners herein are business associations, partnerships and firms as stated, engaged in business for profit, and dealing in and handling food commodities at wholesale in interstate commerce, and are engaged in handling and dealing in the commodities described in the decree entered in this case on the 27th day of February, 1920, and this intervention is filed on behalf of the interveners herein and all other persons in like situation and with a like relationship to the matters involved in said decree.

13. Heretofore, in July or August, 1919, intervener Southern Wholesale Grocers Association, for itself and in behalf of its members, filed its complaint before the Interstate Commerce Commission, against the then Director General of Railroads and all the Railroads of the United States, wherein it was claimed that certain practices, rates and classifications of the defendant railroads in interstate transportation were prejudicial and preferential to Armour & Company, Wilson & Company, Morris & Company and the controlled corporations of said Company, defendants herein, and violative of the Acts to regulate commerce, and wherein it was prayed that such perferences and advantages should be inquired into, condemned and prohibited. Said complaint was docketed before the Interstate Commerce Commission under the title of Docket No. 10745 (Sub-No. 1) and a copy of said complaint will be exhibited to the Court on the hearing hereof.

14. Subsequent to the filing of said complaint of the Southern Wholesale Grocers' Association before the Inter-

state Commerce Commission, hearings were had and testimony taken, but before all the testimony had been taken, to wit, on or about the 9th day of November, 1919, it being brought to the attention of the complainants and of the various packers who had intervened in said complaint, many of whom are defendants in this case, that the Attorney General of the United States was demanding an entry of a decree such as was subsequently entered in this cause on the 27th day of February, 1920, it was suggested that the complaint before the Interstate Commerce Commission should not be further prosecuted until after the entry of said decree.

15. Intervener Southern Wholesale Grocers' Association, other interveners herein, and the membership of the Southern Wholesale Grocers' Association throughout the [fol. 136] United States, made suggestions as to the form that decree should take in this case, through their counsel, and when the decree was finally entered said Association, the other interveners herein, and the members of said Association, believing that said decree, if obeyed and maintained, would compel the defendants to said decree to limit their business methods to fair practices in interstate commerce and would permit interveners and the other members of the Southern Wholesale Grocers' Association to compete in the handling and dealing in food commodities, did not further prosecute their complaint before the Interstate Commerce Commission.

16. The Southern Wholesale Grocers' Association, however, having first moved to suspend the proceedings before the Interstate Commerce Commission, which motion was overruled, did not dismiss its complaint because it was of the opinion that to do so might weaken the petition of the National Wholesale Grocers' Association which had filed a similar complaint against the railroads and which complaint was left pending.

17. Subsequently, to wit, on the 22nd day of June, 1921, the Interstate Commerce Commission decided the complaint of the National Wholesale Grocers Association, which was Docket No. 10745, and in reaching its decision therein considered as a part of the record in said complaint

the decree of February 27, 1920, entered in this Court and recited the claims of the defendants herein who were also interveners in said complaint before said Commission, and among recitations called attention to the fact that defendants herein, Swift & Company, Armour & Company, Morris & Company, Wilson & Company, and Cudahy Packing Company, asserted "that the entry of the decree eliminated the competition to which the grocers object and will bring about a result more favorable to the complainants than any obtainable by an order in this proceeding."

18. Interveners believe and so allege that the decree of February 27, 1920, did in a large part remove, as contended by the packers aforesaid, the advantages and preferences theretofore enjoyed by said packers and complained against in said complaint, and interveners further allege that said packers, defendants in said decree and interveners in said complaint, have received the benefit of said decree in the result shown by the opinion of the Interstate Commerce Commission, which opinion this Court judicially knows and which will be exhibited to the Court on the hearing hereof.

19. Interveners further show that if the decree in this cause entered on the 27th day of February, 1920, be modified as prayed, that such modification will effectually destroy the value of said decree, will reinstate the defendants thereto in the unlawful privileges and preferences complained against in said complaints of the National Wholesale Grocers Association and Southern Wholesale Grocers' Association and that it would be inequitable and unjust and unfair to permit the defendants, after having obtained the advantages of said decree, now to be released from the inhibitory provisions thereof.

[fol. 137] 20. Interveners further show that the defendants to said decree by virtue of their inter-relation, their possession of private cars and by reason of the preferences enjoyed in transportation as a result thereof, possess a partial monopoly and if the decree be modified as prayed the distribution of many important food products will be left practically in the hands of a few large packers who will be enabled, because of their special advantages to monopolize such business and fix at will the prices of and restrain trade in interstate commerce in said food products.

21. Interveners further show that the defendants to said decree have a legitimate field for their operation in business of packing and distributing meat and meat products as to which business said decree does not limit them nor do interveners pray that there should be any interference therewith.

Wherefore, premises considered, interveners pray that any motion to modify said decree of February 27, 1920, be denied, but in the alternative, should the court deem it proper to consider said motion, that there be no action thereon until testimony has been taken and a full hearing had, and interveners pray for such other and further relief as they may show themselves entitled to upon the further hearing of this cause.

Southern Wholesale Grocers Association, Henry Sears Company, Mason Ehrman & Company, John Hoffman & Sons Company, J. M. Radford Grocery Company, Southern Distributing Company, Oliver Finnie Grocery Company, Hall Grocery Company, Albert Mackie & Company, Ltd., The Hicks Company, W. D. Cleveland & Sons, Rappides Grocery Company, Interveners, by Edgar Watkins, Attorney. Hoke Smith, Washington, D. C., and Edgar Watkins, Atlanta, Ga., Attorneys for Interveners.

Duly sworn to by Joseph H. McLaurin. Jurat omitted in printing.

[fol. 138] IN SUPREME COURT OF DISTRICT OF COLUMBIA

PETITION FOR LEAVE TO INTERVENE—Filed September 19, 1921

To the Honorable Judges of the Supreme Court of the District of Columbia:

The petition of the National Wholesale Grocers Association of the United States, by Breed, Abbott & Morgan and Harry W. Van Dyke, its attorneys, respectfully shows:

1. Your petitioner, National Wholesale Grocers Association of the United States, is a voluntary and unincorporated association, having its principal place of business in New York City in the State of New York, composed of upwards of fourteen hundred individuals, partnerships and corporations engaged in the wholesale grocery business throughout the United States, and makes this petition for leave to intervene in the above entitled case.

2. This proceeding was commenced by the United States of America against the defendants for the purposes, among others, of enjoining defendants from continuing any contract, combination or conspiracy in restraint of trade or commerce in the purchase of live stock or other products handled by them and of restraining defendants from monopolizing or attempting to monopolize trade or commerce in such products; and of requiring defendants to divest themselves from dealing in food substitutes or unrelated commodities as specifically defined in the petition, which unrelated commodities included a general line of grocery products such as are usually dealt in by wholesale grocers in the United States.

3. Thereafter, on February 27, 1920, a decree was entered in this court on the written consent of all the defendants wherein and whereby, among other things, said defendants were perpetually enjoined and restrained from manufacturing, jobbing, selling, transporting, distributing or otherwise dealing in such food substitutes or unrelated products consisting of general line of grocery products. Such food substitutes and unrelated products are generally dealt in by all wholesale grocers and in particular by the members of your petitioner's association.

4. Prior to the date of said decree and prior to the institution of said proceeding; various investigations were made by Congressional Committees, by the Federal Trade Commission and the Department of Justice, all of which showed [fol. 139] or tended to show, in accordance with the findings of such investigating bodies, that said defendants in this action were guilty of violations of the Act of July 1890, known as the "Sherman Act" and the Act of September 26, 1914, known as the "Federal Trade Commission Act", and that such actions created or tended to create a monopoly in the sale of food products.

5. Prior to the entry of said decree your petitioner, although not a party to said decree, took part in conferences with the representatives of the Department of Justice leading up to the entry thereof, inasmuch as the actions of defendants injuriously affected the business of the members of your Association were to a large extent adjusted by reason of the entry of said decree were in part for the purpose of terminating and did tend to terminate said injurious acts and the differences and controversies between the defendants and the members of your Association were to a large extent adjusted by reason of the entry of said Decree.

6. On or about July 1, 1919 and prior to the entry of said Decree, your petitioner instituted a certain proceeding before the Interstate Commerce Commission against the Director General of Railroads and the principal railway carriers in the United States, being known as Docket No. 10745 on the Docket of the Interstate Commerce Commission, in which proceeding your petitioner alleged that the defendants herein were receiving certain unjust, unreasonable and preferential rates and privileges in violation of the Acts to regulate interstate commerce. Thereafter the principal defendants herein intervened in said proceeding and having consented to the Decree entered by said court, offered said decree in evidence in support of a defense urged by them that having abandoned the grocery businesses in which they had heretofore embarked they would no longer be in competition with the members of your petitioner's Association. In the opinion of the Interstate Commerce Commission dated June 22, 1921 and reported in Volume 62, p. 375 of the opinions of said Commission in denying certain of the relief sought by your petitioner, said Commission emphasizes the entry of the decree in this case as granting your petitioner to a large extent the relief sought.

7. Your petitioner respectfully represents to this court that to modify or in any way lessen the restraints contained in said Decree entered in this case would result in defendants obtaining a substantial control of the business of dealing in food products in the United States and would tend to a monopolization by the defendants of such business. Your petitioner believes that such result would be inimical and injurious to the welfare of the public and that in par-

ticular the members of your petitioner's Association, apart from such public interests have a direct and special interest and that such modification would tend to the destruction of your petitioner's business.

Wherefore your petitioner prays that an order may be granted permitting your petitioner to intervene in this proceeding without prejudice to the proceedings hereto-[fol. 140] fore had therein and that your petitioner be notified of all further proceedings herein and have such other and further relief as may be just in the premises.

National Wholesale Grocers Association of the United States, by Breed, Abbot & Morgan, 32 Liberty Street, Borough of Manhattan, New York City; Harry W. Van Dyke, Woodward Building, Washington, D. C., Attorneys for Petitioner.

Duly sworn to by Sylvan L. Stix. Jurat omitted in printing.

[fol. 141] IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION TO SET ASIDE ORDER GRANTING LEAVE TO INTERVENE, &c.—Filed September 24, 1921

* * * * * * *

Comes now the petitioner, the United States of America, in the above-entitled cause and moves the Court to set aside and vacate the order heretofore entered, without notice and without prejudice, by this Honorable Court on the tenth day of September, 1921, in this cause, ordering that the Southern Wholesale Grocers Association, Henry G. Sears Company, Mason Ehrman & Company, John Hoffman & Sons Company, J. M. Radford Grocery Company, Southern Distributing Company, Oliver Finnie Grocers Company, Hall Grocery Company, Albert Mackie & Company, The Hicks Company, W. D. Cleveland & Sons, and Rapides Grocery Company have leave to intervene and become parties herein.

Peyton Gordon, United States Attorney; Herman J. Galloway, Special Assistant to the Attorney General, Attorneys for the United States of America.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

AMENDED PETITION OF SOUTHERN WHOLESALE GROCERS' ASSOCIATION—Filed October 13, 1921

* * * * * * *

To the Honorable the Judges of said Court:

Come now the Southern Wholesale Grocers' Association, Henry G. Sears Company, John Hoffman and Sons Company, Mason Ehrman & Company, J. M. Radford Grocery Company, Southern Distributing Company, Hall Grocery Company, Albert Mackie & Co. Ltd., The Hicks Co., W. D. Cleveland & Sons, Rapides Grocery Company, and the Oliver Finnie Grocery Co., and by leave of the Court amend [fol. 142] their intervention filed herein on September 10, 1921, and for amendment and paragraphs of said intervention as follows:

21

Interveners other than the Southern Wholesale Grocers' Association are engaged, as aforesaid, in selling grocery items, among which items they are engaged in selling those things prescribed in paragraphs 4 and 5 of the decree entered herein on the 27th day of February, 1920, Southern Wholesale Grocers' Association is composed of members, as aforesaid, whose members are likewise engaged in buying and selling said commodities. Interveners other than Southern Wholesale Grocers' Association and the members of the Southern Wholesale Grocers' Association buy said commodities and have them shipped in interstate commerce, and each of the businesses of said interveners and said members is in selling said commodities for shipment among the States of the United States. Said interveners and the members of said Association, as well as the defendants herein, are engaged in interstate commerce and these interveners and the members of the Southern Wholesale Grocers' Association here now make as their own the allegations of the original petition filed by the United States herein and interveners say that the violations alleged in the original petition herein of the anti-trust laws of the United States are such violations as would cause loss and damage to the interveners other than the Southern Whole-

sale Grocers' Association, and would cause loss and damage to the members of the Southern Wholesale Grocers' Association, and interveners, composed of corporations and an association, are under Section 16 of the Clayton Act, entitled to sue for the injury and damage threatened against them by the acts alleged against the defendants in the original petition herein.

22

Interveners further show that the petition filed by the United States in this cause alleges violations of the anti-trust laws, and interveners are informed and believe, and believing so allege, that prior to the granting of the injunction in this cause on the 27th day of February, 1920, defendants jointly and in co-operation were selling the commodities described in paragraphs 4 and 5 of said decree heretofore entered in this cause, in interstate commerce, and in the manner and method of conducting said business, as alleged in the original petition herein, were guilty of violations of the anti-trust laws of the United States, which violations threatened loss and damage to interveners and to the members of the Southern Wholesale Grocers' Association. Interveners here make part of this intervention the allegations of the original petition filed herein and say that if the injunction heretofore granted in this cause should be modified so as to permit defendants to return to the status existing prior to the injunction of February 27, 1920, defendants would continue their violations of the anti-trust laws to the injury and damage of interveners.

[fol. 143] 23

Interveners further show that under Section 16, of the Clayton Act, which said Act is one of the anti-trust acts of the United States, they had the right and each of them had the right at the time the United States filed its petition herein to ask and receive injunctive relief. If the filing of this action gives this court exclusive jurisdiction of all questions arising out of the violations of the anti-trust laws alleged in the petition herein, interveners could not now file an independent suit. If the right remains to file an independent suit, then to file such suit in behalf of interveners and others similarly situated would involve a multi-

plicity of suits. Whatever the rights of interveners and other wholesale grocers they have a direct interest in this litigation and in the subject matter of this action, one special to themselves, differing from that of the general public, and under the laws and the principles of equity, and under the equity rules binding on this court, interveners are proper parties to this proceeding. Only in this cause and court where jurisdiction has been obtained of the subject matter and of the defendants can there be full and adequate relief to interveners and others with like interest.

24

Interveners have been informed, and believe, and believing so allege, that the Department of Justice, representing the United States herein, has in contemplation a modification of the decree of February 27, 1920. Interveners are further informed, and believe, and so allege, that said Department of Justice has prepared a motion to modify said decree, which motion it has served upon the defendants herein, and that the defendants have either agreed to the motion or agreed not to oppose the motion. Interveners are unable fully to set out said motion because upon application to Mr. H. J. Galloway, Special Assistant to the Attorney General, for opportunity to see said motion, they were denied such opportunity; but interveners on information and belief allege that the purpose of said motion is for such a modification of said decree as would greatly damage and injure these interveners, and would substantially vacate said decree in so far as it prevents the defendant from engaging in the sale of commodities unrelated to the principal business of defendant, in which commodities interveners, except the Southern Wholesale Grocers' Association, are engaged in selling. Interveners further show on information and belief that it is proposed especially to strike from said decree all of paragraph four thereof, and the parts of other paragraphs having a purpose similar to that of paragraph four. The Department heretofore, on the 9th day of September, 1921, permitted counsel for interveners to state generally the objections of interveners to a modification of said decree, and interveners are now informed, and being informed believe, and allege, that said Department proposed to permit them a hearing before the Honorable Herbert J. Galloway, a Special Assistant to

the Attorney General, and the Solicitors, respectfully of [fol. 144] the Departments of Agriculture and of Commerce and Labor. Interveners are advised, and being so advised, allege that the said board before which it is proposed to grant interveners a hearing, is a non-judicial board, with no power, authority or jurisdiction to hear or decide the rights of these interveners; that said board could not subpœna or swear witnesses, and that only in this court and cause can the facts necessary to a proper determination of the issues herein be adduced, and interveners here and now offer at such time and place as the court may set, to produce witnesses who will testify to the facts, material and necessary, for the court to know before determining what modification, if any, should be permitted of said decree. The proposal of the Department of Justice to grant the form of a hearing as aforesaid to interveners, and to determine for itself by an agreement with the defendant what modification shall be made in said decree, denies interveners that due process of law and that hearing which they are entitled to have, and which they cannot obtain except before this Court and in this cause.

Wherefore interveners pray as in their original intervention, and that this their amended intervention be allowed and filed, and that they may have notice and opportunity to be heard on any and all motions hereafter filed with the right to answer such motions or demur thereto as they may be advised.

Southern Wholesale Grocers' Association, Henry G. Sears Company, John Hoffman & Sons Company, Mason Ehrman & Company, J. M. Radford Grocery Company, Southern Distributing Company, Albert Mackie & Company, Ltd., The Hicks Company, W. D. Cleveland & Sons, Rapides Grocery Company, Oliver Finnie Grocery Company, Interveners, by Edgar Watkins, Attorney. Hoke Smith, Edgar Watkins, Attorneys for Interveners.

Duly sworn to by Joseph H. McLaurin. Jurat omitted in printing.

[fol. 145] It is ordered that the above and foregoing amendment to the intervention filed by Southern Wholesale

Grocers' Association et al., on the 10th day of September, be and the same is allowed without prejudice to the pending motion.

Wendell P. Stafford, Judge.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MEMORANDUM OF DECISION ON MOTION TO STRIKE OUT, &C.—Filed November 1, 1921

* * * * * * *

Without deciding that petitioners have an undeniable legal right to intervene, it is considered that upon the facts alleged in their petition it is fair and just that they should be allowed to intervene, not to take control of the plaintiff's side of the proceedings, but for the limited purpose stated in their petition, namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it, for the following reasons, when taken together:

1. The decree was, in part, at least, the fruit of their own efforts;

2. They abandoned the pursuit of other remedies in reliance upon this decree;

3. The protection afforded them by this decree might have been secured in a proceeding in their own name and behalf;

4. The change suggested would leave them in an embarrassed position in now seeking to secure the same protection;

5. The decree ought not to be modified unless the Court is convinced that the public interest requires it; and the petitioners fairly represent a large and well defined portion of the public whose position will enable them, and whose interest will prompt them, to present to the Court facts or reasons which, among others, the Court ought to hear and consider before allowing the decree to be changed.

This decision must not be understood as opening the door to all would be interveners who may consider themselves

interested in the decree or any change therein, but as strictly limited to the facts alleged in this petition, which are in law admitted by the motion to strike out.

Wendell P. Stafford, Justice.

[fol. 146] In Supreme Court of District of Columbia

Order Overruling Motion to Strike Out—Filed November 5, 1921

* * * * * * *

The motion of the plaintiff to strike out the intervening petition of the Southern Wholesale Grocers Association et al. is overruled for the reasons stated in the filed memorandum of decision.

Wendell P. Stafford, Justice.

In Supreme Court of District of Columbia

Order Allowing Intervening Petition to be Filed—Filed November 5, 1921

* * * * * * *

The petition of the National Wholesale Grocers Association of the United States for leave to intervene herein is granted for the same purpose and to the same extent as the Court has already allowed the intervention of the Southern Wholesale Grocers Association, namely, to be heard in opposition to any proposed change in the consent decree which would deprive the interveners of the protection now secured by said decree.

Wendell P. Stafford, Justice.

IN SUPREME COURT OF DISTRICT OF COLUMBIA.

PETITION IN INTERVENTION—Filed November 8, 1921

* * * * * * *

TO the Honorable Judges of the Supreme Court of the District of Columbia:

Your intervener, National Wholesale Grocers Association of the United States, by Breed, Abbott & Morgan and Harry W. Van Dyke, its attorneys, respectfully shows:

I. Your petitioner, National Wholesale Grocers Association of the United States, is a voluntary and unincorporated association having its principal place of business in New York City, State of New York, composed of upwards of 1,400 individuals, partnerships and corporations engaged in the wholesale grocery business throughout the United States.

II. Your intervener represents that the decree entered herein on February 27, 1920 was entered for the purpose of restraining and terminating certain contracts, combinations and conspiracies in restraint of trade or commerce on the part of defendants in the sale of food products and for the purpose of terminating certain monopolizations in such sale of food products on the part of defendants. Such decree prohibited defendants from dealing in certain lines [fols. 147 & 148] of grocery products and thereby, in large part, terminated certain advantages and preferences enjoyed by the defendants in competition with the members of your intervener's association in the sale of food products. In order to terminate such preferences your intervener had previously instituted a proceeding before the Interstate Commerce Commission against the Director General of Railways and principal railway carriers known as docket No. 10745 on the docket of the Interstate Commerce Commission and in determining such proceedings, said Interstate Commerce Commission, in its opinion which is reported in Volume 62, page 375 of the opinions of said Commission, denied certain of the relief sought by your intervener on the ground that the entry of the consent decree herein had largely eliminated the competition existing between mem-

bers of your intervener's association and the defendants herein.

III. Your intervener represents that to modify or any way lessen the restraints contained in said consent decree of February 27, 1920 would result in defendants obtaining a large degree of control of the business of dealing in food products in the United States and would tend to result in a monopolization of such business by the defendants. Your intervener believes that such result would be inimical and injurious to the welfare of the public and that your intervener and the members of your intervener's Association have a special and direct interest and that such modification would tend to the destruction of their respective businesses.

Wherefore your intervener prays that any motion to modify said decree of February 27, 1920 be denied or in the alternative should this Court consider any motion to modify said decree that no action be had except on notice to your intervener and after a full hearing.

Breed, Abbott & Morgan, No. 32 Liberty Street, New York City. Harry W. Van Dyke, Woodward Building, Washington, D. C.

Duly sworn to by Sylvan L. Stix. Jurat omitted in printing.

[fol. 149] IN SUPREME COURT OF DISTRICT OF COLUMBIA

AMENDMENT PRAYING LEAVE TO SUBSTITUTE NAME—Filed June 14, 1922

* * * * * * *

Comes now American Wholesale Grocers' Association and shows that:

1

Under its former name, Southern Wholesale Grocers' Association, it filed on September 10, 1921 an application to intervene herein, which application was granted and the intervention filed on the same day.

2

Likewise under its former name, this intervener filed an answer to the application of California Cooperative Canneries.

3

On May 10, 1922, by proper corporate action, the name Southern Wholesale Grocers' Association was changed to American Wholesale Grocers' Association and such action was certified to and filed with the Secretary of the State of Tennessee and with the County Clerk of Shelby County, Tennessee, the County and State where movant is incorporated.

4

No other change was made in the powers, purposes and corporate rights of movant than the change in name aforesaid.

Wherefore it is prayed that said petition of intervention, the order granting same, and the answer to the application of California Cooperative Canneries be amended by substituting therein for Southern Wholesale Grocers' Association, American Wholesale Grocers' Association.

Edgar Watkins, Attorney for American Wholesale Grocers' Association.

Read and considered. It is ordered that as prayed, American Wholesale Grocers' Association be and the same is hereby substituted for Southern Wholesale Grocers' Association, and that the intervention of Southern Wholesale Grocers' Association hereafter proceed in the name of American Wholesale Grocers' Association.

This 14th day of June, 1922.

Jennings Bailey, Judge.

[fol. 150] IN SUPREME COURT OF DISTRICT OF COLUMBIA

MEMORANDUM OPINION—Filed April 23, 1925

* * * * * * *

This case comes on to be heard upon the motion of the Swift and Armour groups of defendants to vacate and set aside and declare void the decree of February 27, 1920, and

also upon the motion of the California Co-operative Canneries to vacate or modify the decree or suspend its operation.

The first motion (the motion of the Swift and Armour groups of defendants) is based upon three grounds:

1. That the decree is void because the court was without jurisdiction for the reasons that there were no facts adjudicated; it violated the fifth amendment to the Constitution; there was no case or controversy before the court, and the decree was beyond the jurisdictional power of the court in any event.

2. The decree is void because it is violative of the anti-trust laws themselves and neither the consent of the Attorney General nor the consent of the defendants could validate it.

3. The Attorney General was without power or authority to consent to the decree on behalf of the United States.

As to the first ground, that the court was without jurisdiction, I think counsel have somewhat confused the situations where a decree is erroneous on the face of the record and where it is void for want of jurisdiction. A decree may so clearly adjudicate matters which are beyond the province of the court of equity that it may be void on its face. On the other hand, a decree in a case where the jurisdiction [fol. 151] of equity might be disputed, might be erroneous and subject to correction on appeal or a bill of review, and yet not void. In this particular case, I think the subject matter of the decree is certainly of the same nature as that conferred by statute upon the federal courts sitting as courts of equity, and if the parties now think that its provisions were somewhat broader than those embraced in the pleadings and somewhat beyond the powers conferred by statute, it is too late now to raise this objection and especially by mere motion. See Evers vs. Watson, 156 U. S. 527, and cases there cited on page 533.

It is not sought to set aside the decree on the ground that the consent of the defendants was obtained by fraud or duress, or that the decree was entered by accident or mistake. The parties consented to the decree and their consent evidently showed their construction of the law at the time the decree was entered, and in my opinion they are now estopped from contesting its validity.

While it is true that there was no adjudication of facts before the court, there was the consent of the parties. The bill was filed to enjoin future acts. The defendants consented that they should be enjoined from doing such future acts, and no other adjudication was necessary.

As to the objection that it violates the fifth amendment, it is sufficient to say that the parties consented to the decree.

The same reasoning will apply to the second ground; and as to the third ground that the Attorney General was without power or authority to consent, the Attorney Gen- [fol. 152] eral is the duly authorized counsel for the United States, and a part of the executive department of the government, and I have no doubt of his power to consent to the entry of such a decree. He has consented to the entry of many other decrees and up to this time his principal has not come before the court to repudiate his authority.

The motion of these defendants, therefore, will be overruled.

The motion of the Canneries presents a very different case. The Court of Appeals has sustained its right to intervene based upon the allegations in its petition. The original decree in this cause was entered without the taking of any proof and without the admission of any facts, and may be considered as little more than a contract between the parties sanctioned by the court. Had this decree been entered upon the taking of proof, either by formal testimony or by the admissions of the parties, I think that the burden would have been upon the intervenor to show that the actual facts did not justify the decree. The pleadings show that the intervenor has a substantial interest, that its contractual rights have been impaired by the entry of this decree, and that it is damaged by it. If there was even proof to show that the defendants had violated or were about to violate the laws of the United States, the situation would be different, but as I have said, there was no such proof. It is clear that the Canneries is being damaged by the continuance of this decree, and while I do not think that the decree should be vacated in the present state of the pleadings, I do think that the operation of the decree [fol. 153] should be suspended. My first view was that it should be suspended merely in so far as the Canneries were

concerned, but all of the parties have agreed that if it should be suspended or modified, it should be suspended or modified as a whole. There seems to be little difference in effect between vacating the decree and suspending its operation, but as in my opinion the decree is valid as long as it stands, and no proof has been taken to show that it was improperly entered, all that should be done now is to suspend the operation of the decree.

Decree accordingly.

Jennings Bailey, Justice.

[fol. 154] IN SUPREME COURT OF DISTRICT OF COLUMBIA

DECREE SUSPENDING IN WHOLE OPERATION OF CONSENT DECREE OF FEBRUARY 27, 1920—Filed May 1, 1925

* * * * * * *

This cause came on to be further heard at this term of court on the motions of the Swift and Armour groups of defendants to vacate and set aside and declare void the decree of February 27, 1920, entered herein, and also upon the motion of the intervener, California Cooperative Canneries, to vacate or modify the decree or suspend its operation; and after argument by counsel for the respective parties in interest and consideration by the court it is thereupon, this 1st day of May, 1925, hereby—

Adjudged, ordered and decreed as follows:

1. The said motions of the Swift and Armour groups of defendants are overruled.

2. The said motion of the California Cooperative Canneries to suspend the operation of the said decree of February 27, 1920, is granted and the operation of the said decree as a whole is suspended until further order of the Court to be made, if at all, after a full hearing on the merits according to the usual course of chancery proceedings.

By the Court:

Jennings Bailey, Justice.

[fol. 155] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Equity. No. 37623

UNITED STATES OF AMERICA, Plaintiff,

v.

SWIFT & COMPANY et al., Defendants

FINAL DECREE ON MANDATE—Filed July 24, 1929

This cause came on for hearing on the mandate of the Court of Appeals of the District of Columbia hereinbefore filed and entered, and upon the certified copy of mandate of the Supreme Court of the United States to said Court of Appeals of the District of Columbia transmitted by it to this Court, and upon consideration thereof,

It is ordered, adjudged and decreed:

1. That the judgment of the Court of Appeals of the District of Columbia and the Supreme Court of the United States shall be and the same is hereby made the judgment of this Court.

2. The final decree on mandate of the Court of Appeals of the District of Columbia hereinbefore entered Septembered 13, 1924, shall be and the same is hereby vacated, set aside and held for naught, and that leave to intervene, granted by said decree to the California Co-operative Canneries, shall be and the same is hereby revoked.

3. The petition of the said California Co-operative Canneries for leave to intervene herein shall be and the same is hereby dismissed.

[fol. 156] 4. That so much of the decree of this Court made and entered May 1, 1925, as suspended the operation of the Consent Decree of February 27, 1920, shall be and the same is hereby vacated and set aside, and said Decree of 1920 shall be and the same is hereby restored to full force and effect.

5. That the motion of the California Co-operative Canneries to vacate and set aside said Consent Decree of Feb-

ruary 27, 1920, shall be and the same is hereby denied and dismissed.

6. That, motions having this day been filed on behalf of certain defendants for an extension of time for compliance with the provisions of said Consent Decree of 1920, the time within which to comply with the Second, Third and Fourth paragraphs of said Decree is hereby extended until the hearing on said motions, which hearing is set for October 2, 1929; provided that nothing herein contained shall be construed to permit the defendants to enter into any contracts or commitments which will increase or augment the difficulty of effectuating final compliance with said Decree.

7. That, no service of notice of this hearing having been effected upon the Morris and Wilson groups of defendants, with the exception of such of said groups as are represented of record by William R. Brown, James D. Cooney and John M. Lee, attorneys, it is further ordered that said remaining defendants shall, on or before October 2, 1929, show cause, if any exists, why they should not be fully bound by the terms and provisions of this decree, and that notice hereof may be served upon said remaining defendants in accordance with Rule 20 of the Law Rules of this Court, by mailing such notice on or before September 1, 1929.

[fol. 157] To this order an exception is noted by William R. Brown and James D. Cooney, counsel of record for certain of the Wilson group of defendants.

By the Court:

Jennings Bailey, Justice.

Dated this 24th day of July, 1929.

[fol. 158] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

PETITION OF SWIFT GROUP OF DEFENDANTS FOR EXTENSION OF TIME—Filed July 24, 1929

To the Honorable Justices of the Supreme Court of the District of Columbia:

Now comes the Swift group of defendants by Frank J. Hogan, Charles A. Douglas, and Henry Veeder, their attor-

neys, and respectfully represents and shows unto the Court as follows:

That the decree entered herein on February 27, 1920, required these defendants to divest themselves of ownership in public stock yard market companies and stock yard terminal railroads.

That notwithstanding diligent effort on the part of these defendants they were unable to dispose of their interests in said public stock yard market companies and stock yard terminal railroads before May 1, 1925, on which date this Court suspended the operation of said decree in its entirety until further order of the Court to be made, if at all, after a full hearing on the merits according to the usual course of chancery proceedings.

That an order to abrogate said suspension order of May 1, 1925, was entered by this Court on 24th day of July, 1929.

That the nature and magnitude of the task of divesting themselves of their interests in said public stock yard [fol. 159] market companies and stock yard terminal railroads is such that these defendants should be allowed at least one (1) year within which to make such divestment.

That these defendants will proceed to do the other things required by the decree as rapidly as is consistent with the nature of the business involved, which these defendants believe can be done within one (1) year.

Wherefore said defendants pray that they be allowed one (1) year within which to divest themselves of their ownership and interests in public stock yard market companies and stock yard terminal railroads, and to do the other things required by said decree.

Frank J. Hogan, Chas. A. Douglas, Henry Veeder, & Nelson T. Hartson, Attorneys for Swift Group of Defendants.

Acknowledgment of Service

Service of a copy of the foregoing petition and notice of hearing is acknowledged this 24th day of July, 1929.

H. B. Teegarden, Spec. Asst. to the Attorney General; —— ——, Attorneys for United States.

[fol. 160] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

PETITION OF ARMOUR GROUP OF DEFENDANTS FOR EXTENSION OF TIME—Filed July 24, 1929

To the Honorable the Supreme Court of the District of Columbia:

Now comes the Armour group of defendants, by Frank J. Hogan, Conrad H. Syme and Chas. J. Faulkner, Jr., their attorneys, and respectfully show the Court that the Decree herein required said defendants to discontinue manufacturing and dealing in certain commodities of the character mentioned in Paragraphs Fourth and Fifth of said Decree, and to dispose of their interests in corporations manufacturing said commodities.

That this Court, upon the motion of the California Co-Operative Canneries, by order entered May 1, 1925, suspended the operation of said Decree as a whole until the further order of the Court, to be made, if at all, after a full hearing on the merits according to the usual course of Chancery proceedings.

That said defendants, relying upon said order of suspension, engaged in the manufacture, sale and distribution of certain of said commodities, handling, among others, the products of the California Co-Operative Canneries, under an arrangement entered into after May 1, 1925, which was subject to the further order of the Court in this proceeding. That pursuant to such arrangement, said defendants have handled approximately sixty-five percent of each season's [fol. 161] pack of canned fruits and vegetables of the California Co-Operative Canneries since May 1, 1925, and in making its plans for this year's packing season, which is now at hand, said California Co-Operative Canneries has contracted for large quantities of supplies, such as sugar, cans and packing material, and has arranged for the delivery to it of large amounts of the various kinds of California fresh fruits and vegetables for canning, upon the belief that said defendants would market about seventy-five percent of the current season's pack.

That the California Co-Operative Canneries has no marketing organization able to sell on the general market the entire quantity of canned fruits and vegetables which it has planned to pack this season and will be unable to organize one within the short time intervening between this date and the marketing season. Consequently, if it is suddenly deprived entirely of said defendants' extensive marketing facilities, irreparable damage will result to said company and to the co-operative group of growers constituting its members.

That said defendants have heretofore disposed of their interests in a number of concerns engaged in the manufacture of certain of the commodities mentioned in said Decree; that the only interests in said manufacturing concerns of which said defendants have been unable to dispose consist of a grape juice and fruit preserving plant at Westfield, New York, and a seven-eighths stock interest in the National Fruit Canning Company of Seattle, Washington; that there are surrounding these plants a large number of farmers and growers of fruits who are dependent upon the operation of these factories for the sale of their fruits, which are rapidly maturing for market, and to discontinue the operation thereof at this time would deprive such per- [fol. 162] sons of their marketing outlets without any compensatory benefit whatever to the public generally, and without giving them any opportunity to make other marketing arrangements.

That as a result of the operations aforesaid, some of said defendants now have on hand unsold considerable quantities of certain of the articles mentioned in Paragraphs Fourth and Fifth of said Decree, which cannot be sold and disposed of in the regular and orderly course of business within a period of less than one year.

That said defendants have heretofore sold and disposed of all of their interests in public stockyard market companies and stockyard terminal railroads, with the exception of their interests in The Jersey City Stock Yards Company and the Pittsburgh Union Stock Yards Company.

Wherefore said defendants pray that they be allowed one year within which to cease handling and dispose of said commodities, to divest themselves of their interests in corporations and plants manufacturing such commodities

and to dispose of their remaining interests in public stockyard market companies and stockyard terminal railroads.

(Signed) Frank J. Hogan, (Signed) Conrad H. Syme, (Signed) Chas. J. Faulkner, Jr., (Signed) Nelson T. Hartson, Attorneys for Armour Group of Defendants.

[fol. 163] Notice of Hearing

The plaintiff United States of America will please take notice that the foregoing petition will be for hearing on —, 192-, at ten o'clock a. m., or as soon thereafter as counsel can be heard.

—— ——, Attorneys for Petitioners.

Acknowledgment of Service

Service of a copy of the foregoing petition and notice of hearing is acknowledged this 24th day of July, 1929.

(Signed) H. B. Teegarden, Spec. Asst. to the Atty. Genl.; —— ——, Attorneys for United States.

[fol. 164] In Supreme Court of the District of Columbia

[Title omitted]

Amended Petition of Defendants Swift & Company and Others for Modification of Consent Decree of February 27, 1920—Filed April 2, 1930

The amended petition of the defendants Swift & Company and others respectfully shows unto the Court as follows:

Swift & Company (Illinois); Swift & Company (West Virginia); Swift & Company, Inc. (Kentucky); Swift & Company, Ltd. (Louisiana); Swift & Company (Maine); Swift Beef Company; United Dressed Beef Co. of New York; J. J. Harrington & Company, Inc.; Bimbler Company; G. H. Hammond Company; Omaha Packing Company; Plankinton Packing Company; Sturtevant & Haley Beef & Supply Company; E. K. Pond Company; Van Wagenen & Schickhaus Company; Hammond Beef Company; A. Canfield Commission Company; H. C. Derby Com-

pany; Metropolitan Hotel Supply Company; Louis F. Swift; Edward F. Swift; Charles H. Swift; Gustavus F. Swift, Jr.; Harold H. Swift; Alden B. Swift; George H. Swift; Laurence A. Carton; Charles A. Peacock; Wilfred [fol. 165] W. Sherman; John M. Chaplin; William B. Traynor; defendants in the above entitled cause, by their attorneys Charles A. Douglas, Henry Veeder, Nelson T. Hartson and Frank J. Hogan, petition the Court for certain modifications of the original decree entered in this cause on February 27, 1920, commonly referred to as "Packers Consent Decree", on account of conditions now existing and because of certain radical and revolutionary changes, which have occurred since its entry, in economic conditions, merchandising methods, statute law of the United States and the interpretations thereof, which make this decree unjust, unfair, inequitable and oppressive to these defendants, unnecessary and against the public interest. These defendants respectfully show unto the Court:

I. As to Revolutionary Changes in Marketing Methods Since 1920

1. That since 1920 there have been far reaching changes in the methods of distribution; that these changes have gained such momentum during the past ten years and have developed so far beyond what was previously considered reasonably possible as to amount virtually to a revolution in distribution methods; that the movement has taken various forms, differing in degree according to the character of the product, but affecting the distribution of practically all products; that this movement has been characterized chiefly by integration, mass selling, diversification of products handled, and the development of a brand consciousness on the part of the consuming public.

2. That the movement toward integration, by which is meant the consolidation of the various marketing functions so that goods are made to move from manufacturer to con- [fol. 166] sumer without the intervention of independent middlemen, has in some cases been initiated by the manufacturer, causing him to establish his own retail outlets, while in other instances, retail stores already established have sought to enter the manufacturing field and produce some or all of the products they sell; that this in turn has

forced wholesalers and other middlemen, who were found useful under the old distribution system, to form their own retail outlets and enter the manufacturing field.

3. That along with the movement toward integration has gone mass selling wherever it has been possible to obtain a standardization of products thru mass production methods; that since 1920 mass production principles have been applied all along the line in selling operations; that it is but natural that the mass production principles which were emphasized so strongly and developed so extensively during the war as a means of producing the maximum quantity of products at the minimum cost should, at the conclusion of the war, have been brought right over into the field of selling.

4. That production costs have been reduced wherever mass production principles have been applied, and mass distribution has reduced costs to the ultimate consumer; that with manufacturers competing with manufacturers and retailers with retailers, each trying to get as large a portion of the consumer's dollar as possible, mass selling has become almost the universal rule in this country; that it may almost be said that mass selling is a discovery of the present decade of hardly less importance than the discovery of such forces as steam and electricity.

5. That the factor of brands and brand consciousness on the part of consumers has also played a conspicuous part [fol. 167] in the new distribution methods, and the present decade more than any other may rightly be called the "Brand Con-cious Age"; that the reason for the growing importance and multiplication of brand is that standardization under mass production methods implies uniform quality; that the consumer comes to know that when he buys a particular brand rather than bulk goods he is obtaining a definite quantity and quality of product; that under modern advertising methods, brand names have come to possess substantial money value to the manufacturer or retailer of the product, and the necessity of protecting such brands has forced many manufacturers into the retail business, or has forced retailers to manufacture their own brands.

6. That as an illustration of the extent to which integration and mass selling have grown during the past ten years,

there may be cited the high degree of integration which has been attained in the oil industry; that it was not many years ago that the oil business was one made up of separate producers, manufacturers, wholesale distributors and retailers, while at the present time it is a commonplace fact that all of the larger oil companies which produce the oil also do their own refining and, for the most part, their own retailing; that integration has become almost complete and the number of stations thru which gasoline is sold to consumers has grown by leaps and bounds.

7. That similar movements have taken place in other fields as, for example, in 1927 there were 347 chains operating 3,155 drug stores, and from 1920 to 1929 the leading chain drug stores increased their sales 160%, while the leading wholesale druggists increased their sales only 23%; that every large drug chain now manufactures a definite quantity of the drugs it merchandises at retail.

[fol. 168] 8. That in 1927 there were 230 chains having 2,180 stores selling men's clothing and furnishings; 215 chains having 2,036 stores selling women's apparel, and from 1920 to 1929 the leading chain stores handling wearing apparel for men and women increased their sales 333%, while the wholesale firms handling men's clothing and women's clothing had an actual decrease in sales.

9. That in 1920 there were 27,000 retail grocery chain stores, and in 1929 there were approximately 1,000 grocery chains operating 75,000 stores; that between 1920 and 1929 the leading chain grocery stores increased their sales 255% while the sales of the leading wholesale grocers actually declined.

10. That the great mail-order houses and department stores have also had an astounding growth in sales since 1920; that in the latter year the large mail-order houses had scarcely any retail or department stores, while at the beginning of 1930 Sears Roebuck & Company had in operation 70 large department stores and 214 smaller retail stores and 31 Class "C" stores; that Montgomery Ward & Company has put 532 retail stores in operation during the past two years and recently announced that it would open 1,500 retail stores—one in each of the 1,500 cities having a population of 5,000 or more.

11. That in addition to the trend toward integration, mass selling, and the development of brands, there has been a strong tendency to diversify the kinds of products handled; that in drug retailing, for example, the food business is becoming increasingly important; grocery chains are selling cigarettes and tobacco; cigar chains are selling candy and minor drug items; men's hat chains are adding coats as well as women's hats and sport clothes; grocery chains are adding meat, household utensils, drug items, candy, soft drinks, lunch counters, and hardware; the five [fol. 169] and ten cent stores, which have increased their sales over 150% since 1920, carry food products, piece goods, hosiery, etc.; and shoe chains frequently sell hosiery and knit goods.

12. That the revolutionary changes which have been taking place are a healthy sign of competition; that they are in the public interest; and that the changes in the methods of distributing food are nothing more than part of a larger movement applying to the distribution of all standardized products; that the Consent Decree prohibits these defendants from participating in the new highly competitive distribution movement, from integrating in line with the modern trend, from developing brands in non-meat lines, from fully applying mass production and mass selling principles, and, therefore, from doing all they can with the aid of present facilities to bring about lower distribution costs on foods or to improve service to customers; that the Consent Decree unnecessarily restrains these defendants, is oppressive and injurious, substantially lessens competition, and is against the public interest.

II. As to Retail Chain Store Developments

1. That in 1920 at the time of the entry of this Decree, chain grocery stores were a relatively small factor in the distribution of food products; that the quantities of meats which they distributed at that time were negligible and they had shown no marked tendency toward expansion in the field of retail meat distribution: that the total number of chain grocery stores in the United States increased from approximately 27,000 in 1920 to approximately 75,000 in 1930; that the total sales of grocery chains in the United States have increased from approximately $700,000,000 in 1918 to approximately $3,500,000,000 in 1929; that the total

[fol. 170] sales of leading grocery chains increased approximately 255 per cent from 1920 to 1929 as computed and published by the Federal Reserve Board; that in 18 of the 24 largest cities of the United States the chain grocery stores are doing more than one-half of the retail grocery business; that in 10 of the largest cities they do 56.4 per cent of the retail grocery business; that in 5 of the largest cities they do 57.4 per cent of the total grocery business; and that in the entire United States they do in excess of 40 per cent of the total grocery business.

2. That The Great Atlantic & Pacific Tea Company, now a nationwide chain, has increased from 4,623 stores in 1919 to about 16,500 stores in 1930 and from $190,000,000 in sales in 1919 to approximately $1,100,000,000 in sales in 1929; that the Kroger Grocery and Baking Company increased from 780 stores in 1919 to 5,575 stores in 1930 and from $34,550,000 in sales in 1919 to $287,000,000 in sales in 1929, and in addition, said Kroger Grocery and Baking Company controls the parent Piggly Wiggly Corporation which operates 3,000 retail stores on a license and royalty basis; that the American Stores Company has increased from 1,151 stores in 1920 to 2,600 stores in 1930 and from $76,400,000 in sales in 1920 to $143,000,000 in sales in 1929; that Safeway Stores, Inc., was formed in 1926 with 834 stores and in 1930 had 2,660 stores and has increased in sales from $103,300,000 in 1928 to $213,000,000 in 1929; that other large grocery store chains have grown since 1920 to a corresponding extent; and that the indications are that their rapid growth will continue into the future.

3. That there are now approximately 1,000 regular grocery chains in the United States; that their total annual sales are nearly $3,500,000,000; that many of them are [fol. 171] large organizations strongly financed and firmly entrenched in the business; that the annual sales volume of many of them range from $50,000,000 to over $1,000,000,000 per annum; and that their number and strength show clearly that these defendants, if permitted to deal in the commodities prohibited by this Decree and to conduct retail meat markets, would not and could not constitute any monopoly or threat or danger of monopoly in retail trade and that they would not and could not restrain trade or commerce therein either now or in the future.

4. That in 1920, the chain grocery stores sold practically no meats and even as late as five years ago were an inconsequential factor in the meat trade; that in the last few years their expansion in that field has been aggressive and rapid; that the indications are that in the future their expansion in the field of retail meat distribution will be more rapid; that The Great Atlantic & Pacific Tea Company now has approximately 3,500 stores with meat departments and is carrying out a program of installing 5,000 to 10,000 meat departments in their stores within the next three to five years; that the Kroger Grocery and Baking Company now has approximately 3,000 stores with meat departments; that Safeway Stores, Inc. now has approximately 1,366 meat departments as compared with 289 in the year 1927, just after its organization; that American Stores Company now operates 1,000 meat departments; that other large chain store companies have installed meat departments in many of their stores and are rapidly installing others; that all chains are now operating a total of approximately 22,000 meat markets which means that about one-third of all chain grocery stores are selling meat and doing over 20 per cent of the total retail meat busi- [fol. 172] ness; that the trend in the chain grocery business is now definitely toward the establishment of general food stores as contrasted with grocery stores carrying grocery staples alone in 1920; that, for example, during 1929 the Great Atlantic & Pacific Tea Company closed a number of its small stores and opened large combination food stores substantially increasing sales per store; that said trend toward the establishment of general food stores and the rapid expansion of the grocery chains into the field of retail meat distribution which is gaining in momentum, means that the purchasing power for retail meat distribution is likewise rapidly becoming concentrated into a relatively small number of buyers; that said increasing concentration of the retail meat business into the hands of a relatively small number of companies constitutes a serious disadvantage and handicap to these defendants and will continue to do so as long as these defendants are prohibited by this decree from competing in the distribution of certain commodities therein named and selling meats at retail; and that the strong trend in the direction of the absorption of the larger part if not practically all of the

retail meat business by said grocery chains indicates with certainty a serious danger to the business welfare of these defendants unless this decree is modified so that these defendants will have the right to engage in said businesses also and compete with said grocery chains.

5. That since the entry of this decree, an entirely new development has occurred in the form of the establishment of Voluntary Chains of grocery stores, which are associations of formerly independent grocery stores, with varying degrees of centralization, organized chiefly for the purpose of obtaining the advantages of concentrated buying; that there are now approximately 421 such voluntary chains [fol. 173] scattered throughout the country, operating approximately 60,000 grocery stores; that said 60,000 grocery stores in voluntary chains are separate from and in addition to the 75,000 stores in regular chains as hereinabove alleged; that the voluntary chains and regular chains together operate approximately 135,000 grocery stores; that some of said voluntary chains are very large, that the Independent Grocers Alliance, for example, operates approximately 9,000 retail stores, Red and White stores, 4,500, Nationwide Stores, 2,500, Creasey Corporation, Inc., 9,300, Clover Farm Stores, 2,000, United Purity Stores, 1,200; that the trend in said voluntary chains is to become more and more centralized; that the movement toward the establishment of voluntary chains has been rapid and aggressive and is increasing rather than diminishing; that the largest number of stores in said voluntary chains, if not practically all of them, sell meat at retail; that said voluntary chains constitute a further concentration of the buying power for the sale of meats at retail; that said concentration is to the serious disadvantage and damage of these defendants and represents a grave danger in the future unless this decree is modified so that these defendants will also have the right to sell meats at retail; that the extent to which regular chains and voluntary chains have already been organized and established and their financial ability and size in the trade show the absolute unsoundness of any contention that these defendants could monopolize or threaten to monopolize retail food distribution or represent a danger of monopoly or restrain trade or commerce therein either now or in the future if permitted to enter the field of retailing meats and food products.

6. That it is the practice of the grocery chains, as well as other chains, to handle their own brands of goods either partly or exclusively; that goods bearing the private brand [fol. 174] of the grocery chains are manufactured either at the factories of the chains or under contract by some outside manufacturer; that either practice is prejudicial and damaging to the interest of the outside manufacturers because manufacturing such private brands at the factories of the chains takes the volume of goods so manufactured away from the outside manufacturers altogether, and when manufactured by the outside manufacturer under the private labels of the chains, places the outside manufacturer at the mercy of the chain as to that portion of the output of his factory devoted to such manufacturer; that the failure of the chain to renew the contract for private labeled goods or to renew it at a price which will show a profit means serious embarrassment to the manufacturer and perhaps loss or bankruptcy; that the practice of the chains of dealing largely or exclusively in their own private brands is prejudicial and damaging to these defendants in merchandising packing house products, and represents a serious and increasing danger to the business welfare of these defendants so long as this decree prohibits the defendants from establishing their own retail outlets; and that the sale of private branded goods is not susceptible of monopolization by these defendants.

7. That the modern trend in the merchandising of goods is strongly toward integration; that the integration movement has increased in momentum and size in the last ten years beyond anything anticipated or foreseeable in 1920; that it means the movement of goods direct from the producer to the consumer without the intervention of middlemen; that the service to consumers and efficiencies in such direct movement are much greater than could be obtained by the methods chiefly used in 1920 and prior thereto and [fol. 175] the savings to the consumer in such direct movement are very large; that manufacturers and merchandisers of goods who are unable to integrate or participate in such direct movement are at a serious disadvantage; that further growth and continuance of this trend means that those who do not join in it must eventually fail; that this trend is rapidly gaining a foothold in the packing industry

among non-defendant packers and grocery chains; that these defendants are prohibited by this Decree from integrating or moving packinghouse products direct from the producer to the consumer; and that such prohibition is injurious and damaging to these defendants in the conduct of their business and threatens their existence.

8. That the combined net profits for five large grocery chains, namely, The Great Atlantic & Pacific Tea Company, Kroger Grocery and Baking Company, American Stores Company, Safeway Stores, Inc., and National Tea Company, in 1928 averaged 2.7 per cent on sales as compared with an average of 1.3 per cent on sales for the four packer defendants in this case, and as compared with 1.5 per cent on sales for Swift & Company; that the average net profit of said five large grocery chains was 23 per cent on the net worth (capital stock and surplus) as compared with 5 per cent on the net worth for said four defendant packers, and as compared with 6.7 per cent on the net worth for Swift and Company; that the average net profits of said five large grocery chains on total assets were 16.6 per cent as compared with 3.2 per cent for said four defendant packers, and as compared with 4.3 per cent for said Swift & Company; that said five large chains made average sales of about $23.00 per dollar of fixed property investment as compared with average net sales of said four defendant packers of about $6.00 per dollar of fixed property investment; that said five large chains had an average of [fol. 176] four times the amount of business per dollar of fixed property as is done by said four defendant packers; that The Great Atlantic & Pacific Tea Company does about eight times as much business per dollar of fixed property as is done by said four defendant packers on the average and over five times as much business per dollar of fixed property investment as is done by said Swift & Company; that on the average said five large chains have only about 2 per cent of borrowed money invested in their business as compared with an average of about 30 per cent for said four defendant packers and about 24 per cent for said Swift & Company; that with the exception of the National Tea Company all of said large chains have investments in marketable securities, whereas said four defendant packers have

no substantial investments of that character; that the above mentioned financial data show that said five large chains are in a more liquid and stronger financial position than any or all of said four defendant packers, and do business on a much more profitable basis than any of said four defendant packers; that the above financial data further show that it would be impossible for these defendants to attain a monopoly in the chain store field, or dominate it, or restrain trade or commerce therein, or constitute any danger or threat of monopoly, domination, or restraint of trade, either now or in the future, and that this decree is unnecessary, unjust and oppressive to these defendants, substantially lessens competition, and is against the public interest.

9. That the steady growth in the number of chain stores since 1920 has made it more and more difficult for these defendants to utilize their distributing facilities profitably; that more and more chains have established their own depots from which they distribute to their retail stores thereby duplicating the branch house facilities owned by [fol. 177] these defendants; that the principal chains are planning the construction of more depots in the near future; that the chains which have established such depots insist on buying direct from the packing plants of these defendants at the F.O.B. Plant prices, which practice has two effects on the branch houses of these defendants, namely: to reduce steadily the volume of business of said branch houses and to increase in corresponding measure the expense of operating said branch houses; that these defendants must continue the operation of said branches if independent retailers are to have a dependable source of supply of packing house products; that the continuance of the growing practice of the chains to establish their own depots will increase the adverse effects upon said branch houses; that in view of the fact that the entry of the chains into the retail meat business has been recent and that they now handle about 20 per cent of the retail meat business of the country while they do about 40 per cent of the grocery business, it is certain that their growth in the retail meat business will be very rapid, at least until their volume of retail meat business corresponds to their volume of grocery business; that these defendants have already suffered losses

at certain branch houses by reason of the above facts; that any substantial increase in the warehousing depots of the chains will force these defendants to abandon a large number of their branch houses to the serious detriment of both the consuming public and the livestock producers; that these adverse effects upon the branch houses of these defendants can be obviated by permitting them to handle grocery products and to establish their own retail stores thereby assuring dependable outlets for their products and putting them on a basis of equality with chain stores.

10. That the methods used by the grocery chains in merchandising the branded products of these defendants [fol. 178] often work great injury to the reputation of the latter's products and narrow the retail outlet through which they may be sold; that it is the well-known and commendable practice of the grocery chains to buy at low prices in order to sell at low prices and thereby to attract as many patrons as possible to their stores; that the grocery chains at times find it advantageous to use the nationally known branded products of these defendants as "leaders"; that such leaders are extensively advertised and sold at bare cost or less, at prices calculated to attract a great many customers to their stores; that the grocery chains, selling leaders at bare cost or less, expect to recover such loss by selling other products, at a profit, to the same customers; that where the chains resort to practices of this sort, independent retailers object to the handling of defendants' products either on the ground that they cannot meet chain store competition on such products, or because of the impression created in the customer's mind that goods sold so cheaply must necessarily be inferior; that in this way chain groceries without intending to injure defendants, have nevertheless restricted defendants' market among independent retailers and have often forced defendants to move their perishable products at drastic price concessions; that without intending to do so, chain grocery stores when using defendants' products as leaders have thereby made it easier for themselves to buy additional quantities of nationally branded products from defendants at greatly reduced prices; that under the law, defendants cannot force chain stores to maintain fixed resale prices on their products; that the only redress which defendants have is through

modification of the Consent Decree so that they may be permitted to establish their own retail stores and provide a direct outlet for their branded products.

11. That where meat products are sold to chain stores they are usually sold in large quantities, and that the neces- [fol. 179] sity for supplying large orders to the central buyers of the several chain store systems works a special handicap on defendants on account of the peculiar nature of their product; that most of the products handled by defendants are highly perishable and must be transported and sold promptly for what the market affords; that when a chain buyer refuses to take his normal quantity, defendants are suddenly confronted with the task of finding a new outlet for their products before deterioration sets in, and such forced selling of perishable products in the open market is invariably attended by heavy losses; that to avoid taking such large losses these defendants are obliged when bargaining with chain store buyers to reduce their prices to the point where the chain business will be assured, which means either no profit at all, an exceedingly small profit, or a loss because the chain store buyer, like all other buyers, is interested in obtaining goods at the lowest price possible; and the great volume of his purchases gives him tremendous power over these defendants who have not the alternative of establishing their own retail stores and consequently must frequently sell at sacrifice prices in order to move their large stocks of highly perishable products and maintain their plants in operation; that the necessity of moving large stocks of perishable products without having assured outlets reduces the bargaining power of these defendants to a minimum and virtually leaves them at the mercy of the chain buyers; and that these defendants have been caused serious injuries thereby and such injuries will become greater unless the bargaining power of these defendants is increased by modification of this decree so that they can handle grocery products and establish retail stores.

12. That in order to avoid this unfavorable position as much as possible, and to find more dependable outlets for [fol. 180] perishable products, defendants have been obliged more and more since 1920 to seek out and cultivate small individual retailers of meat, greatly adding to the number of small orders and therefore to the distribution cost at

branch houses that the average weight sold per sales ticket at such branch houses has steadily declined from 119 pounds in 1923 to 110 pounds in 1927, 106 pounds in 1928 and 103 pounds in 1929; that synchronously with this decline, the average branch house expense per cwt. has increased from 90¢ in 1923 to $1.02 in 1927, $1.05 in 1928, and $1.06 in 1929; that the growth of 31 per cent in total number of orders since 1923, the decline of 13 per cent in the average weight per order and the increase of 17 per cent in the branch house expense has been the direct result of the increasing number of meat departments in chain stores and the defensive measures defendants have been obliged to take; that retail chain store development in recent years, though praiseworthy from the point of view of its effect upon costs of distribution, has, by reason of this decree, worked to the positive injury of the business of these defendants and that the continuation of this trend in chain store development which forces defendants to operate their distributive facilities at higher and higher cost will only aggravate the injury which the business of these defendants has already suffered.

III. As to the Grocery Chains in Meat Packing and Other Manufacturing

1. That these defendants are in the business of manufacturing and dealing in meats and meat products and livestock products and butter, cheese, eggs and poultry; that prior to 1920, the grocery chains had not entered those fields or businesses to any appreciable extent; that since 1920, the grocery chains have entered those fields, are ex- [fol. 181] panding therein, evidencing a strong trend toward performing both the manufacturing and wholesaling functions in those products, at least to the extent of their own requirements; that Kroger Grocery and Baking Company now owns and operates 2 meat packing plants, 5 sausage making plants and 4 dairies; that the Great Atlantic & Pacific Tea Company owns and operates 5 refrigerated meat warehouses and plans to build 4 more, 1 meat cutting plant, 2 cheese factories and 1 creamery; that Safeway Stores in California buys its meat on the hoof; that some of the other grocery chains are performing the manufacturing and wholesaling functions with respect to meats, poultry, butter, eggs and cheese, at least to the extent of a por-

tion of their requirements; that the trend toward the absorption of the manufacturing and wholesaling functions by grocery chains with respect to their requirements of packing house products and poultry, butter, eggs and cheese leaves these defendants uncertain as to retail outlets for the output of their plants and, if continued, will operate to the serious disadvantage and injury of these defendants and will continue to so operate as long as these defendants are prohibited by this decree from retailing; and that the unfairness of this decree is apparent from the fact that the grocery chains are entering the meat packing and produce business while these defendants are prohibited from entering the grocery business or even selling their own products (meats and produce) at retail.

2. That some of the principal chains have established their own agencies in the country districts for the purchase of butter and eggs; that these agencies buy in the same manner and in competition with these defendants; that the entry of such chains into the business of performing the collecting and wholesaling functions in butter and eggs for their stores (which function was formerly performed by [fol. 182] these defendants and other wholesalers) has injured these defendants in that it decreases the volume of business of these defendants in butter and eggs and leaves a surplus of collecting and wholesaling facilities on their hands with resulting difficulties of operation and losses and a reduced number of available retail outlets; that in that manner these chains are completely integrating as to their requirements of butter and eggs while these defendants cannot integrate because forbidden by this decree to establish retail stores; that the chains are also integrating in the cheese business; that the disadvantages of a concern not integrated in competing with a completely integrated concern are well known; that the trend of grocery chains is toward further integration; that these defendants are being seriously injured by it because of the unfair prohibitions of this decree against the establishment of retail stores by these defendants.

3. That the grocery chains are entering various other manufacturing fields such as operating canneries and bottling works, roasting coffee, operating milk condenseries, manufacturing salad dressing, candies, spices, teas, extracts, etc.; that the Great Atlantic & Pacific Tea Company oper-

ates 11 factories for miscellaneous grocery processing, 30 bakeries, 2 cheese factories, the world's largest milk condensary, one canning and preserving plant and 1 creamery; that the Kroger Grocery and Baking Company operates at least 10 bread and cake bakeries, 2 meat packing plants, 5 sausage factories, 4 coffee roasting plants and 1 general manufacturing plant; that American Stores Company operates 8 bakeries, 8 warehouses, 1 large milk plant and manufactures preserves, mayonnaise, extracts, ketsup; that it roasts coffee, cans fruit and vegetables; that Safeway Stores, Inc., operates 16 bakeries, 1 candy factory and 39 [fol. 183] warehouses; and that chain stores in fields other than foods are manufacturing a number of their requirements of certain products and evidencing a strong trend toward expansion in that direction; and that such trend has become general as is elsewhere herein described.

4. That the absorption of the manufacturing and wholesaling functions by chain stores within the last decade has in certain instances caused great loss and serious embarrassment to some manufacturers and forced others to establish their own retail outlets; that a considerable number of the grocery chains bake their requirements of bread and other bakery goods; and their entry into the bakery field drove some baking companies to making house to house canvasses to sell the output of their factories and others to the establishment of their own retail outlets; that the retail shoe chains forced some shoe manufacturers to establish their retail outlets; that the entry of the grocery chains into the business of retailing meats has already injured these defendants; that if the grocery chains continue their expansion into the field of manufacturing and wholesaling meats and produce as is now indicated, these defendants will be seriously embarrassed and damaged in the conduct of their businesses but will be unable to save themselves as the baking companies and shoe manufacturing companies did because of the prohibitions of this decree against selling meats at retail.

IV. As to Non-defendant Meat Packers in Chain Grocery Stores

1. That certain meat packer competitors who are not subject to this decree are now selling meats at retail and

expanding in the field of retail meat distribution which they were doing only to a negligible extent in 1920; that one of [fol. 184] the most notable examples of this trend is Adolph Gobel, Inc., a large non-defendant meat packer, processor and sausage maker, who operates ten plants and has recently acquired several meat packing concerns, including Jacob E. Decker & Sons, a large non-defendant meat packing company at Mason City, Iowa; that said Adolph Gobel, Inc., controls and operates 19 retail stores; that Hygrade Food Products Corporation organized in 1927 acquired the meat packing plants of the Allied Packers, Inc., eight in number, and other meat processing plants, and already controls and operates 22 retail food stores; that said Hygrade Food Products Corporation by common stock ownership is also affiliated with other retail stores such as United Cigar Stores, Happiness Candy Stores, Neve Drug Stores, and Whelan Drug Stores, and has established food and refreshment stands to serve automobile service stations of Beacon Oil, Inc.; that the Frye Packing Company of Seattle, Washington, has a chain of 50 retail stores in Seattle, and is planning to expand that chain in Portland and other cities; that certain New Orleans meat packing companies either have obtained or are obtaining control of a chain of 27 retail meat markets in that city; that other non-defendant meat packers, processors and slaughterers are also selling meats at retail; that this trend toward retailing meats by the non-defendant meat packer competitors of these defendants operates to the damage and injury of these defendants in the conduct of their business and seriously endangers their future existence and welfare unless their right to also sell meats at retail is restored to them by modification of this decree.

2. That there is a distinct possibility that more of the large non-defendant meat packers will merge with grocery chains; that two instances of such mergers have already [fol. 185] occurred, namely, that of Adolph Gobel with Jacob E. Decker & Sons of Mason City, Iowa, and that of Hygrade Food Products Corporation with Allied Packers, Inc., elsewhere herein referred to; that such mergers of non-defendant packer competitors of these defendants with grocery chains will seriously injure the business of these defendants unless this decree is modified so that these defendants can establish retail outlets; and that this decree

is unfair and unjust to these defendants in that it prohibits them from establishing retail outlets while permitting their competitors to establish such retail outlets and merge with retail outlets already established.

3. That many of the non-defendant meat packer competitors of these defendants have their own branch houses and operate their own refrigerator cars; that they are free to utilize these facilities for handling and distributing articles of commerce which these defendants are prohibited from handling by this decree; that Morrell & Co., one of the largest non-defendant packers deals in and handles a highly diversified line of groceries and other food products; that Kingan & Company, a large and well-established packer, is dealing in fish; that Jacob E. Decker & Sons, another large and well-established packer, now owned by Adolph Gobel, Inc., deals, among other things, in oysters and poultry food; that many other non-defendant meat packer competitors of these defendants are likewise now dealing in such prohibited articles; that to exclude these defendants from these fields while their meat packer competitors who are not subject to this decree are permitted to deal in them, is, in view of changed conditions, unjust and unfair, substantially lessens competition, and is against the public interest.

[fol. 186] V. As to Wholesale Grocers

1. That there are approximately 6000 wholesale grocers located in approximately 2300 cities throughout the United States doing an annual business of several billions of dollars; that many of said wholesale grocers are of great financial strength, strongly entrenched in the trade, and doing profitable businesses of national scope; that the size, geographical distribution and nature of the wholesale grocery business is such that it cannot be monopolized by any one concern or small number of concerns, and that these defendants if permitted to engage in selling groceries at wholesale would not and could not, even though they desired to do so (which they do not), monopolize the wholesale grocery business of the United States, or restrain trade or commerce therein, and could not constitute any danger or threat of monopoly or restraint of trade either now or in the future.

2. That since the entry of this decree a large number of the wholesale grocers of the United States have combined in the form of voluntary chains or associations; that the Independent Grocers Alliance is a combination of 58 wholesalers so organized, operating a retail chain of over 9000 stores and doing a business estimated to be approximately $500,000,000 per year; that the Red & White Stores is a combination of 25 wholesale grocers operating over 4500 retail grocery stores in the United States; that the Nationwide Stores Company is a combination of 18 wholesale grocers operating about 2500 retail grocery stores; that Creasey Corporation, Inc., is a combination of 30 wholesale grocers operating approximately 9300 retail grocery stores in the United States; that the Clover Farm Stores is a combination of 21 wholesale grocers operating approximately 2000 retail grocery stores; that the United [fol. 187] Purity Stores is a combination of 6 wholesale grocers operating approximately 1200 retail grocery stores; that there are other voluntary chains of wholesale grocers of varying size and importance and of varying degrees of centralization of control; that the trend among such voluntary chains of wholesale grocers is toward a stronger and stronger centralization of control and eventually most, if not all, of them will be merged into single units; that these combinations of wholesale grocers constitute organizations of great financial strength, large sales and dominating positions in the business already established and controlled by them; and that these defendants if permitted to sell groceries at wholesale would not and could not monopolize the wholesale grocery business or constitute any danger or threat of monopoly, or restrain trade or commerce therein either now or in the future.

3. That in addition to the operation and control of chains of retail grocery stores by chains of wholesale grocers, many single wholesale grocers throughout the country operate and control by ownership or affiliation chains of retail grocery stores; that this movement toward combinations of wholesale grocers and the operation and control of chains of retail grocers by wholesale grocers and by combinations of wholesale grocers has occurred almost entirely since the entry of this decree; that the operation of chains of retail grocery stores by wholesale grocers is a shining example of the unfairness of this decree; that the

wholesale grocers are themselves taking an important part in the modern trend in merchandising of goods, namely, integration and diversification, and thereby greatly increasing its size and momentum; that many of them are saving their very lives by doing so; that these defendants are also wholesalers of food products, but are prohibited by this decree from integrating or diversifying; and that [fol. 188] although the wholesale grocers are establishing their own retail outlets handling meats and groceries to the disadvantage and injury of these defendants, they vigorously and selfishly oppose any modification of this decree to permit these defendants to do likewise; and further by excluding these defendants from the general field of food distribution, this decree creates a special privilege for wholesale grocers and grocery chains to the injury of these defendants and from an economic point of view violates the spirit of the anti-trust laws in that it substantially reduces competition and is therefore against the public interest.

4. These defendants aver upon information and belief that since the entry of this decree many wholesale grocers have begun to handle and are now handling packinghouse products; that packinghouse products are sold and handled in many of the stores of the retail chains of the wholesale grocers which have been acquired or organized since the entry of this decree; that the wholesale grocers are both wholesaling and retailing packinghouse products; that the wholesale grocers retail packinghouse products, but strongly oppose permission to these defendants to retail packinghouse products; that wholesale grocers deal in packinghouse products, but strongly oppose permission to these defendants to deal in grocery products; and that the unfairness and injustice of this decree to these defendants is thereby shown in that it creates a special privilege for said wholesale grocers by excluding competition from their field and is against the public interest as declared by the anti-trust laws.

5. That the modern trend in merchandising is toward diversification; that that trend has gained momentum of unexpected and unforeseeable proportions within the last [fol. 189] ten years; that it is becoming particularly important in the field of foods because of another trend hereinabove described toward the establishment of general re-

tail food stores; that in order to keep pace with the modern trend toward general retail food stores a food manufacturer and wholesaler must handle as many lines of commodities as can be handled efficiently and to advantage in order to give the maximum service at the minimum cost to the general food store and thereby to the consumer; that although canned goods and other groceries could be handled along with meats with efficiency and savings, these defendants are excluded by this decree from joining in the modern trend towards such diversification; and that this prohibition is greatly to the injury and damage of these defendants.

6. That these defendants have unused distribution and sales facilities which could be used in the distribution of grocery products if the restrictions of this decree with respect thereto were modified; that by so using such distribution and sales facilities the overhead in the conduct of the meat business of these defendants would be reduced and both meats and groceries could be distributed more efficiently and with considerable saving both to the public and to these defendants; that it is to the interest of the livestock producers and the meat industry of the country, and the consumers of meats, that these defendants be permitted to distribute groceries and that the exclusion of these defendants from the grocery business, while perhaps serving the selfish interest of the wholesale grocers, is seriously damaging to these defendants, to livestock producers and consumers, is unnecessary and unfair, substantially lessens competition, and is against the public interest.

7. That these defendants have no unfair advantage of any kind or description in transporting and distributing [fol. 190] grocery products; that in 1921 the Interstate Commerce Commission after full hearings in a case to which both the National Wholesale Grocers Association and the Southern Wholesale Grocers Association were parties, decided that these defendants have no unfair advantage over wholesale grocers in the field of railroad transportation by reason of their refrigerator cars (62 I. C. C. Reports 375); that these defendants now have no unfair advantage over wholesale grocers in the field of railroad transportation; that since the entry of this decree there has been a tremendous development of motor truck transporta-

tion in the United States; that the building of hard roads and the perfection of motor-driven vehicles in the last ten years have produced many radical changes in the field of transportation; that the wholesale grocery business is one peculiarly adapted to transportation by motor truck; that the wholesale grocers are using chiefly, and many of them practically altogether, motor truck transportation in delivering their products; that these defendants have no advantage in the field of motor truck transportation, and that this decree is totally unnecessary to protect wholesale grocers against such non-existent advantages in transportation.

8. That most, if not all, of the wholesale grocers of the United States merchandise grocery products under their own private labels and brands; that products so merchandised are not susceptible of monopolization because of the insistent demand on the part of consumers for particular branded products to which they have become accustomed; that the power of brands is usually so great in consumer's consciousness that a small price reduction on a less familiar brand does not readily cause the substitution of the less known for the better known brand; and that there is there-
[fol. 191] fore no possibility of monopolization of grocery products on the part of the defendants either now or in the future.

9. That in addition to the wholesale function in the field of food merchandising performed by the wholesale grocers, the retail chain stores, both regular and voluntary, also perform a wholesale function; that even if these defendants could obtain a monopoly of the wholesale grocery business (which is impossible), they could not continue such monopoly or make it effective because the consumer would always have the alternative of purchasing from the chains; that any contention that these defendants could obtain a monopoly of food distribution or constitute a threat of monopoly of such food distribution either now or in the future as against the great chain store organizations already in the field and the great wholesale grocery organizations and the large food manufacturing and distributing companies recently formed by mergers, or otherwise, and those theretofore existing, is absolutely unsound.

10. That any removal of the restrictions of the original decree in this case with respect to retail meat markets will be ineffective relief to these defendants unless corresponding modification of paragraphs 3, 4 and 5 of said decree with respect to grocery products and other commodities is also made for the reason that under present-day conditions of distribution of food commodities it is totally impracticable to establish and maintain retail markets selling meats alone, and that competitive conditions and the modern trend of merchandising are such that only combination food stores selling meats in combination with groceries could be established with any hope of success.

11. That any disadvantages or difficulties or loss of position in the trade suffered by the wholesale grocers of the [fol. 192] country are not and have not been caused by these defendants or by any of the activities of these defendants, and would not have been caused by these defendants even though their right to deal in articles prohibited by this decree had not been taken away by this decree; that said disadvantages and difficulties, if any, of said wholesale grocers have been due to changes in economic conditions and in methods of merchandising, namely, integration and diversification by grocery chains and companies created by mergers, such as General Foods, Standard Brands, etc., as elsewhere herein described; that said wholesale grocers are middlemen, and said process of integration eliminates or tends to eliminate middlemen; that proof of the statement that the disadvantages and the difficulties, if any, of the wholesale grocers have been due not to the defendant packers or any of their activities, but to the modern movement of integration, is conclusively found in the strong movement among wholesale grocers to do their own manufacturing, establish their own private brands and their own chains of retail stores; that by this means the wholesale grocers are joining in the modern movement of integration and adding greatly to it, and thereby saving themselves, but, nevertheless, they are unalterably opposed to permitting these defendants also to join in such modern movement for the purpose of saving their business from embarrassment, loss and possible failure; and that said decree is on that account unfair to these defendants, wrongfully excludes them from fields of business in which they could en-

gage with benefit to the public, is damaging to these defendants and is against the public interest.

[fol. 193] VI. As to How Other Food Manufacturers are Adjusting Their Businesses to the Radically Changed System of Distribution

1. That these defendants are not only forbidden by this decree to establish retail outlets for their own products, but they are also forbidden to diversify their line in accordance with modern trends in distribution methods; that since the entry of this decree other food manufacturers have so diversified in order to get the important advantage which handling a variety of branded products gives in bargaining with the chain grocery stores, to deliver these products at the retailer's door in peddler wagons, to increase and improve their service to the retail stores and lower their costs of distribution; that it is this necessity of strengthening bargaining power that has caused numerous food manufacturers to expand their business into diverse lines, or to merge into large organizations, handling grocery products that are totally unrelated to one another.

2. That examples of this trend are to be seen in such companies as General Foods Corporation, Standard Brands, Inc., The Gold Dust Corporation, The National Dairy Products Corporation, The Borden Company, Adolph Gobel, Inc., Hygrade Food Products, Kraft-Phenix Cheese Corporation, and National Brands, Inc., all formed or expanded since the entry of this decree.

3. That General Foods Corporation formed in 1929 and having total sales in 1929 of $128,036,792.00, produces and distributes the following products (practically all of which are branded, nationally advertised, and well-known) to chain grocery stores, independent grocers and wholesalers:

Postum Cereal
Instant Postum
Grape-Nuts
[fol. 194] Post Toasties
Post's Bran Flakes
Post's Whole Bran
Jell-O
Institution Jell-O
Genesee Plain Gelatin
Genesee Gelatin Dessert
Genesee Pudding Powder
Franklin Baker's Bulk Coconut
Coconut Oil

Copra Oil Cake
Cashew Nuts
Log Cabin Syrup
Wigwam Syrup
Maxwell House Coffee
Maxwell House Tea
Maxwell House Tea Balls
Calumet Baking Powder

D-Zerta
Ice Cream Powder
Swans Down Cake Flour
Instant Swans Down
Swans Down Graham Flour
Minute Tapioca
Minute Gelatin
Star Pearl Tapioca
Lightning Tapioca
Walter Baker's Premium No. 1 Chocolate
Walter Baker's Breakfast Cocoa
Walter Baker's Dot Sweet Chocolate
Walter Baker's Caracas Sweet Chocolate
Walter Baker's German's Sweet Chocolate
Walter Baker's Milk Chocolate Bar
Walter Baker's Milk Chocolate Almond Bar
Walter Baker's Chocolate Coatings and Liquors
Post's Bran Chocolate
Franklin Baker's Premium Shred Coconut
Franklin Baker's Brazil Packed Coconut
Franklin Baker's Milk Packed Coconut
Franklin Baker's Southern Style Coconut
Franklin Baker's Banner Coconut
Franklin Baker's Snow Drift Coconut
Certo
Pectin
Sanka Coffee (de-Caffeinated)
Hellmann's Mayonnaise
Hellmann's Olive Relish
Hellmann's Thousand Island Dressing
Hellmann's Russian Dressing
Hellmann's Sandwich Spread
Hellmann's Southern Relish
Hellmann's Tartar Sauce
Hellmann's Horse Radish
Hellmann's Beet Radish
LaFrance
Satina
Diamond Crystal Salt
Products of General Sea-foods Corporation—Fish and other Sea-foods;
Products of Batchelder, Snyder, Dorr & Doe Company—Meats, Fruits, Vegetables, Dairy Products, Preserves, and Condiments
Blue Point Oysters
Sealshipt Oysters
By-products of Corn and Wheat
Wheat Flour
Corn Flour
Corn Meal
Chops, Grits
Corn Oil
Cattle Feeds

[fol. 195] that in line with the modern trend in merchandising, late in 1929, said General Foods Corporation bought either control or a substantial interest in Batchelder & Snyder of Boston, Massachusetts, a company doing a large business in manufacturing and processing meats, distributing dairy, fruit and vegetables products and provisions in the New England States, New York and the Atlantic seaboard states and are now developing retail outlets; that this connection enables General Foods Corporation to sell meats in combination with its other numerous lines of commodities which these defendants are prohibited from doing by this decree; and that the disadvantage which these defendants are thus suffering by reason of this decree is serious.

4. That Standard Brands, Inc., which comprises Fleischmann Company, Royal Baking Powder, Widlar Food Products Company, E. W. Gillett Company, Ltd., and Chase & Sanborn, has made available to retail dealers the same cash store door service and quick delivery on Royal products, Chase & Sanborn coffee, etc., that has prevailed heretofore

on Fleishmann Yeast; that Fleischmann system alone includes about 2,000 small motor trucks which are capable of reaching 300,000 grocers daily, and all in all, Standard Brands, Inc., has a fleet of upwards of 4,000 trucks engaged in the direct selling of a wide variety of nationally advertised products; that other food manufacturers are developing along similar lines.

5. That because of the wide distribution which is obtained from handling a wide variety of products and from the use of the new methods of selling and delivery, these companies will be able to secure a substantially increased sales volume on all products distributed; that by bringing together under one management a large group [fol. 196] of diversified products, fewer salesmen are required to take orders from individual retailers; that one salesman can take orders for a wider variety of products where formerly it required several salesmen duplicating one another's territories to get the same orders; that the savings so effected in selling and delivery expense enable these companies to quote lower prices both to individual retailers and to retail chain buyers; that in addition their bargaining power with the chains is greatly strengthened owing to the number and importance of the branded goods they control and the lower prices they are able to quote; that the net result of such diversification of products and reduction in selling expenses is to bring about lower prices to consumers which is in the public interest.

6. That these defendants are prohibited by the decree from keeping in step with the new methods of distribution; that they are unable to use the established methods available to other food manufacturers to bargain advantageously with chain stores; that they are prohibited by the consent decree from diversifying their line of products as other food manufacturers are doing in order to make their salesmen more efficient order takers and to reduce their selling costs; that they are prohibited from making any contribution toward reducing the cost of distributing food products in line with the modern trend; and that this decree is therefore inequitable, substantially lessens competition and is against the public interest.

7. That 7 large food manufacturing and distributing companies which have been formed or vastly expanded since the entry of this decree, namely—General Foods Corporation, Gold Dust Corporation, National Dairy Products Corporation, The Borden Company, Beechnut Packing [fol. 197] Company, Schulte Retail Stores Corporation and Proctor & Gamble, in 1928 had average earnings of 9 per cent on sales as compared with 1.3 per cent for the four defendant packers; that said 7 food manufacturing and distributing companies earn on the average four times as much on net worth as said four defendant packers; that said 7 food manufacturing and distributing companies earn five times as much on the total assets as said four defendant packers.

8. That said 7 food manufacturing and distributing companies are in stronger financial positions than said four defendant packers, doing very large businesses on much more profitable bases than these defendants or any of said four defendant packers; that said 7 food manufacturing and distributing companies are competitors of these defendants who have the privilege and do handle articles which these defendants are prohibited by the Consent Decree from handling; that these defendants if permitted to engage in business in the articles prohibited by this decree will be on a parity instead of at a disadvantage in competition with said 7 food manufacturing and distributing companies, and others of like character, such as California Packing Corporation, Hygrade Food Products Corporation, Adolph Gobel, Inc., Standard Brands, Inc., etc., and in addition thereto will be in competition with the retail grocery chains and the wholesale grocery chains and the retail chains of the wholesale grocers and the voluntary chains and the countless independent wholesalers and retailers; that these defendants could not possibly constitute any danger of monopoly or domination in the distribution of foods or of such prohibited articles or restrain trade with respect thereto, and that this decree is unnecessary, substantially lessens competition, and is against the public interest.

[fol. 198] VII. As to Certain Economic Effects of the Consent Decree

1. That in view of the revolutionary changes which have taken place in distribution methods since 1920 the Consent

Degree is inequitable in that it forbids the defendants to engage in retail trade and does not at the same time forbid large chain store systems from engaging in meat packing; it forbids defendants to engage in retail trade and does not at the same time forbid large non-defendant packers to engage in retail meat trade, either by the acquisition of retail stores or by merger with chain store companies; it forbids defendants to protect their position by diversifying the products handled as other large food producers are doing; finally, it forbids defendants to safeguard their position through integration as the wholesale grocers are doing.

2. That the Consent Degree is detrimental to the public because it unreasonably restrains and substantially lessens competition in the distribution of foods and puts an unsurmountable barrier in the way of defendants, preventing them from making any contribution toward further lowering the cost of distributing foods and makes for high cost rather than low cost distribution.

3. That in view of the changes which have taken place, the Consent Degree is injurious to these defendants because it adversely affects the volume of their sales and profits in all sections where a large proportion of the retail meat trade is in the hands of chain stores; it has forced defendants as a matter of self protection to concentrate on developing small order business with individual retail stores, and this has materially increased branch house expense since 1923; it stultifies every attempt on the part of defendants to improve and cheapen their methods of distributing meats; it places defendants in position where, on [fol. 199] account of the perishability of their products, they are at all times subject to heavy losses growing out of forced sales in the open market when chain stores fail to renew large orders; they are subject at all times to the loss of business growing out of the entry of chain stores into meat packing on a large scale; they have already felt the loss of business in communities where chain stores have established their own meat packing and sausage plants; they are at all times subject to the loss of business growing out of the entry of large nondefendant packers into the retail business on a large scale; and they have already suffered a loss of business in those sections where such packers have entered the retail trade.

4. That in view of the fundamental changes that have taken place in distribution and the present trend toward more and more integration, the Consent Degree clearly contains power to destroy these defendants, which power has already begun to operate adversely on them, a power that was never contemplated by any of the consenting parties at the time the decree was entered.

VIII. As to Interest of Farmers and Livestock Producers

1. That the Farmers and Livestock Producers of the United States are a very large and important part of the public; that agriculture is the primary and fundamental industry of the nation; that the wholesale grocers are a small and relatively unimportant part of the public performing the function of middleman which is rapidly becoming uneconomical and obsolete, as compared with the Farmers and Livestock Producers who are the source of the nation's food supply; that the prosperity of the Farmers and Livestock Producers is a matter of great [fol. 200] concern to the entire public; that the gravity of the agricultural situation is evidenced by the several farm relief measures which have been adopted by the National Government in the last ten years, and the vast interest which the highest officials of the nation have manifested in it.

2. That approximately two-thirds of the human population of the United States lives east of the Mississippi River, while approximately two-thirds of the livestock population is produced west of the Mississippi River; that there must be large packers having wide distributing facilities in order to transport meat from the producing sections in the west where there is a surplus to the large consuming sections in the east where there is a deficit; that large packers by means of branch houses and car routes reaching all sections of the country provide a nationwide outlet for the farmers' livestock; that under these conditions the entire nation is the market for the livestock produced in any section of the country; that every livestock producer is thereby freed from the effects of having to depend upon a narrow, local, capricious outlet for his products; that in view of the wide outlet afforded by large packers for the orderly distribution of the farmers' livestock products, anything tending

to undermine the financial strength and competitive ability of large packers must react unfavorably upon the prices received by producers for their livestock; that it is directly to the interest of livestock producers to have the fullest use of those marketing facilities which will be made available only when large packers are not crippled by the artificial and unreasonable restrictions of this decree.

3. That the Farmers and Livestock Producers of the nation are enthusiastically and strongly in favor of modi- [fol. 201] fication of this decree as a measure which will enure to their benefit, and thereby to the public interest; that the Farmers and Livestock Producers are deeply interested in broadening and improving distribution facilities and merchandising methods for their products, which is in the public interest; that 35 livestock producers and farmers associations are urging modification of this decree and have evidenced their position in this respect by passing resolutions, including such organizations as the American Farm Bureau Federation, the American National Livestock Association and the National Wool Growers Association; that the names of the organizations and the number of resolutions passed by each are as follows:

Name of association	No. of resolutions
American Farm Bureau Federation	1
American Farm Congress	1
American National Livestock Association	3
Arizona Cattle Growers Association	2
Arizona Wool Growers Association	1
California Cattlemen's Association	2
California Wool Growers Association	2
Colorado-Nebraska Lamb Feeders' Association	1
Colorado Stock Growers Association	2
Idaho Wool Growers Association	2
Idaho Horse and Cattle Raisers' Association	2
Interstate Live Stock Producers Association	1
Kansas Livestock Association	2
Missouri Livestock Association	2
Montana Stockgrowers' Association	1
Montana Wool Growers Association	2
National Wool Growers Association	1
Nebraska Stockgrowers Association	2
Nevada Land and Livestock Association	1

Name of association	No. of resolutions
Nevada State Farm Bureau	1
New Mexico Cattle Growers' Association	1
Ohio Farm Bureau Federation	1
Ohio Livestock Co-Operative Association	1
[fol. 202] Oregon Horse and Cattle Raisers' Association	2
Oregon Wool Growers' Association	2
Sheep and Goat Raisers' Association of Texas	1
Southern Livestock Association	1
Texas and Southwestern Cattle Raisers Association	2
Utah Horse and Cattle Growers' Association	1
Utah Wool Growers Association	2
Washington Wool Growers Association	2
Western Cattle Marketing Association	1
Western South Dakota Stockgrowers Association	1
Wyoming Stockgrowers Association	2
Wyoming Wool Growers Association	1
	53

that it is in the interest of the Farmers and Livestock Producers of the nation, and therefore in the public interest, that this decree be modified as hereinafter prayed.

4. That in 1929 at the request of the Attorney General, the Secretary of Agriculture of the United States held hearings on the subject of the modification of this decree; that dozens of witnesses consisting of officials of farm organizations and livestock associations, and representatives of the farming population of the United States in general, appeared at this hearing and urged modification of this decree as a measure for their welfare and the welfare of the public; that the evidence in favor of modification was overwhelming and almost without dissent, and that public opinion in general is also overwhelmingly in favor of modification.

IX. As to Fresh Milk and Cream and Feeds

1. That these defendants are and have been large purchasers of milk and cream and manufacturers of butter and cheese, and dealers in those products, and it has been [fol. 203] their practice, as well as the practice of other manufacturers, to buy their supplies of milk and cream

for the manufacture of butter and cheese in farming communities which are not readily accessible to the city markets using fresh milk and cream; that the cities of this country have been growing in size and their demands for fresh milk and cream have been rapidly increasing; that methods of transporting fresh milk and cream have improved so that since 1920 city dealers have been enabled to draw supplies from more and more remote sections of the country; that the result is that they have been drawing upon some of the territories in which these defendants have heretofore purchased milk and cream for the manufacture of butter and cheese; that the prices for fresh milk and cream for city distribution are invariably higher than those for the manufracture of butter and cheese, and such high priced milk and cream cannot be manufactured into butter and cheese except at a loss; that on account of the prohibitions of this decree, these defendants have been forced where city dealers enter territories in which these defendants purchase milk and cream, either to quit the territory or to do business in such territory at a loss; that the competitors of these defendants in these territories have been meeting this situation by purchasing milk and cream and selling the same in fresh condition wherever the demand and the condition of the market makes that course advisable or profitable; that these defendants have suffered loss and damage on account of these developments which have occurred since the entry of this decree; that this decree prohibits these defendants from competing on a basis of equality with competitor butter and cheese manufacturers, and that it is unfair and oppressive.

2. That the above described invasion of the territories where milk and cream were and are being purchased ex- [fol. 204] clusively for the manufacture of butter and cheese will grow and increase in the future and that these defendants will suffer further loss and damage unless the prohibitions of this decree with respect to fresh milk and cream are modified.

3. That these defendants have been further damaged by the prohibitions of this decree against dealing in fresh milk and cream by reason of the fact that usually farmers who have poultry and eggs to sell, also have fresh milk and cream to sell, and prefer to sell to dealers or manufacturers

who will purchase all four commodities which these defendants are prohibited by this decree from doing.

4. That these defendants are prohibited by this Decree from dealing in many poultry and animal feeds; that since the entry of this Decree it has become the practice of the competitors of these defendants in the purchase of poultry, butter and eggs, to carry stocks of poultry and animal feeds at their buying stations; that the carrying of such stocks of poultry and animal feeds is a convenience to the farmer because it enables him to purchase such feeds at the time and place of selling his produce; that on this account many farmers have shown a considerable preference for dealing with produce buying stations carrying poultry and animal feeds which has caused these defendants the loss of a substantial volume of produce which they otherwise would have purchased and by reason of which these defendants have suffered loss and damage to their business.

5. That these defendants have extensive facilities throughout the entire country for purchasing, transporting and selling perishable commodities of the above mentioned character and have had long experience in business of that [fol. 205] character; that it would be materially to the advantage of both the farmer and the consumer if these defendants could deal in fresh milk and cream; that the removal of the prohibition against doing so would furnish a broader and more highly competitive market for farmers' poultry, eggs, milk and cream, and assure them of the most efficient transportation and distribution; that it is inconsistent with the purpose of this decree to prejudice and damage these defendants in the conduct of their businesses not prohibited by this decree; and that this decree is unnecessary and oppressive to these defendants, detrimental to farmers and consumers, and against the public interest.

X. As to Stockyards

1. That as to the public stockyards market companies owned and operated by these defendants (hereinafter referred to as "packer owned stockyards"), they show unto the Court that the facilities and service furnished by such stockyards to producers, shippers, commission men, buyers and all others doing business in them are as good and effi-

cient as the facilities and service furnished at non-packer owned stockyards; that the prices of livestock marketed in said packer owned stockyards are as good as those in non-packer owned stockyards; that packer ownership of said stockyards has no effect upon the prices of livestock sold in such yards; that the competition among defendant packers and against all other buyers in said packer owned stockyards is full, free and vigorous—as it is in non-packer owned stockyards; that commission men doing business at packer owned stockyards are not discriminated against as to office space or location of pens; that non-defendant packers are not discriminated against or prejudiced in any way at packer owned stockyards; that buyers of livestock [fol. 206] other than defendant packers are not discriminated against or prejudiced in any way at packer owned stockyards; that shippers and sellers of livestock in packer owned stockyards are not discriminated against or prejudiced in any way; that these defendants own stockyards principally at places where they have packing houses and it is to the advantage of these defendants to maintain efficient service and good markets at such yards in order that the supply of livestock for their packing plants may be adequate; that there is no discrimination of any character against stockyard banks and cattle loan companies at said packer owned yards; and that there is no discrimination of any kind against any one doing business at such packer owned yards.

2. That shortly after the entry of the decree in this case, the Hon. George Sutherland and the Hon. Henry W. Anderson, were appointed trustees by this Court of the stock of the Swift and Armour interests in stockyards; that thereafter said trustees, accompanied by a representative of the United States Department of Justice, held hearings at six of the principal packer owned stockyards of the country for the purpose of ascertaining conditions at such yards, particularly as to whether they were being legally conducted; that such hearings were exhaustive and needless to say impartial, were held at the stockyards where it would be most convenient for those interested in the operation of said yards and those having any kind of a complaint to appear and testify; that they were held after notice both posted at the yards and published by the press inviting those interested to appear and testify; that Federal offi-

cials, state officials, livestock association officials, livestock exchange officials, livestock market newspaper publishers, bankers, producers and many others appeared and testified, [fol. 207] making a voluminous record; that after said hearings were completed, said trustees reported to this Court that they found no violation of law by the stockyards companies or these defendants in their operation of said stockyards or in any other manner; that said trustees further reported that they neither met nor found any complaint on the part of anyone about the conduct and operation of said stockyards or the packer ownership thereof, except as to the prices of feed which were based on the outside market prices for feedstuffs and are now subject to regulation by the Secretary of Agriculture under authority of the "Packer and Stockyards Act, 1921" (42 St. L. 159); that said Trustees' report and transcript of record of the hearings by said trustees upon which said reports are based, were filed with this Court and are a part of the record in this case; that the pertinent excerpts from said reports are for the convenience of the Court, marked Exhibit "A," attached hereto and hereby made a part hereof as effectively as if written herein; and that said investigation and report by said trustees shows that the prohibitions of this decree against ownership of stockyards by these defendants is unnecessary and that these defendants by reason of their ownership of such stockyards do not have any illegal advantage in any way and do not and cannot use said stockyards as a means of restraining trade or commerce, either in the purchase of livestock or the manufacture and sale of meats and livestock products and that there is no danger that monopoly or restraint of trade will result from such ownership in the future.

3. That since the entry of the decree in this case, the "Packers and Stockyards Act, 1921" has been passed by the Congress of the United States and is now law; that said "Packers and Stockyards Act, 1921" has been held constitutional by the Supreme Court in the case of Stafford v. Wallace, 258 U. S. 495; that said "Packers and Stock- [fol. 208] yards Act, 1921" requires every stockyard within its jurisdiction to (a) register with the Secretary of Agriculture, (b) furnish reasonable stockyards services without discrimination, (c) make all rates and charges for stockyards services just, reasonable and non-discrimi-

natory, (d) file printed schedules of all rates and charges with the Secretary of Agriculture and keep such schedule open to public inspection, (e) give ten days' notice of any change in rates or charges, and (f) refrain from any unfair, unjustly discriminatory or deceptive practice or device; that said Act empowers the Secretary of Agriculture to (a) prescribe the form and manner of preparing and arranging the posting of schedules of rates and charges for stockyards services, (b) hold hearing with respect to any new rate, charge, regulation or practice, and render a decision with respect to the lawfulness thereof, (c) determine and prescribe just, reasonable, non-discriminatory rates and charges and prohibit any other, (d) hear complaints alleging unfair practices or devices and issue cease and desist orders with respect thereto, and (e) apply to United States District Court for the enforcement of any order made; that said "Packers and Stockyards Act, 1921" fully and completely regulates and controls said stockyards; that said Secretary of Agriculture is empowered to and does regulate, control and supervise said stockyards, minutely and in detail; that anyone having a grievance as to the conduct of said stockyards can seek and obtain a hearing of his complaint before the Secretary and secure relief if his complaint is well founded; that the regulation by the Secretary under said Act is complete, adequate, equitable and effective; that said Act is a change in statutory law of the United States which has been made since the entry of this decree and which renders this decree inappropriate, unnecessary, and unjust in the radically changed conditions now existing.

[fol. 209] XI. As to Stockyards Terminal Railroads

1. That Paragraph two of said Decree also enjoins these defendants from owning Stockyards Terminal Railroads; that said Stockyards Terminal Railroads are a necessary adjunct to the operation of stockyards, and the allegations herein contained with respect to stockyards, wherever applicable, are hereby incorporated with respect to Stockyards Terminal Railroads; that in addition, said Stockyards Terminal Railroads are regulated and controlled with respect to their rates and charges and otherwise by the Interstate Commerce Commission thoroughly and completely

and in the same manner and to the same extent as other railroads of the United States; that the trustees' reports filed in this cause on April 8, 1922, and March 21, 1923, as aforesaid, show that these defendants were not guilty of any illegal or unfair practices in the operation of said Stockyards Terminal Railroads; that these defendants are not now and have not been, either since or before said trustees' reports, guilty of any unfair practices or illegal acts with respect to the operation of said Stockyards Terminal Railroads; that these defendants further allege that said trustees' reports show no reason for divestment of the ownership of said Stockyards Terminal Railroads from these defendants as provided for by the injunction of the original decree in this cause, and that, moreover, there is no reason for such divestment, but on the contrary, it is in the interest of the public and of orderly and efficient marketing of livestock at said stockyards that these defendants be permitted to own and operate said Stockyards Terminal Railroads; that these defendants further show unto the Court that the regulation and control of said Stockyards Terminal Railroads by the Interstate Commerce Commis- [fol. 210] sion affords all the protection and guaranty against illegal or unfair practices which the public requires or needs; and that the injunction with respect to ownership of Stockyards Terminal Railroads in unnecessary and against the public interest.

XII. As to Changes in Statutory Law—"Packers and Stockyards Act, 1921"

1. That the "Packers and Stockyards Act, 1921" is a change in statutory law of the United States which has occurred since the entry of this decree; that said Packers and Stockyards Act provides for rigid regulation and control of the meat packing industry and public stockyards market companies; that in addition to the power and authority of the Secretary of Agriculture with respect to stockyards hereinabove outlined, said Act makes it unlawful for any packer to—

(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in commerce; or

(b) Make or give, in commerce, any undue or unreasonable preference or advantage to any particular person or

locality in any respect whatsoever, or subject, in commerce, any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respeect whatsoever; or

(c) Sell or otherwise transfer to or for any other packer, or buy or otherwise receive from or for any other packer, any article for the purpose or with the effect of apportioning the supply in commerce between any such packers, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly in commerce; or

(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, [fol. 211] any article for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in any article in commerce, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in any article in commerce, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business in commerce, or (2) to apportion purchases or sales of any article in commerce, or (3) to manipulate or control prices in commerce; or

(g) Conspire, combine, agree or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivision (a), (b), (c), (d), or (e).

that said act prohibts practices and establishes regulations and controls over meat packers and stockyards not theretofore authorized by the law; and that said act provides complete, equitable and effective regulation of both meat packers and stockyards and renders this decree totally unnecessary.

XIII. As to New Interpretation of the Anti-trust Laws—Steel Case

1. That the basis of the injunctions of this decree is not that these defendants have or had a monopoly but that the

potential power of these defendants constituted a menace to acquire a monopoly of the food distribution of the nation; that it was the mistaken opinion of the Attorney General at the time of the entry of this decree that power was unlaw- [fol. 212] ful, regardless of its purpose; that after the entry of this decree, namely on March 1, 1920, the Supreme Court of the United States handed down its decision in the Steel Case; that the Attorney General made an identical contention in that case; that the Supreme Court emphatically overruled that contention and decided that unexerted power is not unlawful; that a portion of the language of the court in that case reads as follows:

"The Government, therefore, is reduced to the assertion that the size of the corporation, the power it may have, not the exertion of the power, is an abhorrence to the law; or, as the Government says, 'the combination embodied in the corporation unduly restrains competition by its *necessary effect* (the italics are the emphasis of the Government), and therefore is unlawful regardless of purpose.' 'A wrongful purpose,' the Government adds, is 'matter of aggravation.' The illegality is statical, purpose or movement of any kind only its emphasis. To assent to that, to what extremes should we be led? Competition consists of business activities and ability, they make its life; but there may be fatalities in it. Are the activities to be encouraged when militant, and suppressed or regulated when triumphant because of the dominance attained? To such paternalism the Government's contention, which regards power rather than its use the determining consideration, seems to conduct. Certainly conducts, we may say, for it is the inevitable logic of the Government's contention that competition must not only be free, but that it must not be pressed to the ascendency of a competitor, for in ascendency there is the menace of monopoly.

We have pointed out that there are several of the Government's contentions which are difficult to represent or measure; and the one we are now considering, that is, the power is 'unlawful regard. ss of purpose,' is another of them. It seems to us that it has for its ultimate principle and justification that strength in any producer or seller is a menace to the public interest and illegal because there is potency in it for mischief. The regression is extreme, but short of it

[fol. 213] the Government cannot stop. The fallacy it conveys is manifest."

(U. S. v. U. S. Steel Corporation, 251 U. S. 417, 450-451.)

that the ruling by the Supreme Court of the United States in the Steel case is an interpretation of the Anti-Trust Laws of the United States made after the entry of this decree, and not theretofore given; that that changed or new interpretation of the Anti-Trust Laws makes modification of this decree necessary in order to make it consistent with said Anti-Trust Laws as thus interpreted.

XIV. As to the Relative Position of Swift and Company in the Meat-packing Industry

1. That of the total number of cattle slaughtered in the United States in 1929 these defendants (Swift and Company and its subsidiaries) handled approximately 17.37 per cent; of calves, 17.47 per cent; of sheep and lambs, 28.60 per cent; of hogs, 12.71 per cent; and of all livestock 16.10 per cent; that of the total quantity of butter produced in the United States in 1929, these defendants handled approximately 8.04 per cent; of eggs, 5.75 per cent; of poultry, 5.84 per cent; of cheese, 20.97 per cent; and of butter, eggs, poultry and cheese combined 7.12 per cent; that of the total quantity of oleomargarine produced in the United States in 1929, these defendants handled approximately 17.50 per cent; that of the total quantity of lard substitutes produced in the United States in 1929 these defendants handled approximately 24.69 per cent; that of the total quantity of hides produced in the United States in 1929 these defendants handled approximately 17.37 per cent; that the volume of businesses thus handled by these defendants in live stock and the above named products and com-

[fol. 214] modities is too small to constitute a monopoly or a threat or danger of monopoly or even suggest a monopoly; that these defendants act individually and severally and independently of others in the conduct and operation of their business; and that said volume of business is too small to enable these defendants to dominate the meat packing business of the United States or control or manipulate the prices of live stock or packinghouse products or re-

strain trade or suppress competition therein or to constitute any danger of such domination, control, manipulation or restraint in the future.

2. That in every market where these defendants buy live stock they buy in competition with all other packers, large and small, and all other buyers; and that in every market where they sell meat they are in keen competition with all large packers, and with all small packers and slaughterers who convert locally grown live stock into meat for local consumption.

3. That the invested capital of these defendants, percentage of profit or investment, and profit per dollar of sales per year from 1920 to 1929 inclusive were as follows:

	Invested capital	% of profit on invested capital	Profit per dollar of sales
1920	$231,552,000	2.2	.0047
1921	211,740,000	3.7 (loss)	.0098 (loss)
1922	212,789,000	6.1	.0201
1923	213,974,000	6.2	.0176
1924	216,100,000	6.5	.0182
1925	219,479,000	7.0	.0176
1926	223,124,000	7.0	.0165
1927	223,327,000	5.4	.0132
1928	226,140,000	6.5	.0153
1929	227,217,000	5.8	.0126

[fol. 215] that said invested capital is quite small when compared with that of many companies of today such as United States Steel Corporation, General Motors Corporation, many oil and copper companies and numerous others; that said invested capital and such modest profits are too small to constitute a monopoly or a threat or danger of monopoly or an indication of a monopoly; and that said profits are to small to suggest that these defendants dominate, control, manipulate prices, restrain trade or suppress competition in any way in any of the businesses in which they are engaged, but on the contrary these defendants conduct their businesses in full and vigorous competition with all others engaged in such businesses.

4. That there are approximately 1,245 non-defendant meat packers (meat packers who are not subject to this

decree) in the United States, and in addition thereto, thousands of local slaughterers all of whom in 1929 slaughtered approximately 58.76 per cent of the cattle slaughtered in the United States, 67.31 per cent of the calves, 46.43 per cent of the sheep and lambs, 70 per cent of the hogs, and 64.87 per cent of all live stock; that a great number of said non-defendant packers have large businesses, have doubled and trebled their volumes of business in the last 10 years, are financially exceptionally strong, well established in the trade, make 2 or 3 times as much profit per dollars of sales as these defendants and are strong and aggressive competitors of these defendants; that said non-defendant meat packers have a decided advantage over these defendants in that the business of said non-defendant meat packers is largely local in character and more adjustable to quick changes in market conditions; they can avoid markets when glutted or unfavorable, can cut down their operations when markets are depressed and increase when profitable, while [fol. 216] the nature of the service performed by these defendants and the facilities such service requires do not permit them to do any of these things, but, on the contrary, these defendants must buy live stock on all principal markets each day whether the price is favorable or not and must sell meats in all the principal markets of the country each day whether profitable or not; and that these defendants do not and cannot monopolize or dominate the meat packing industry or control or manipulate prices of any of the products of the same or restrain trade or commerce therein or constitute a danger or threat in that direction either now or in the future.

5. That these defendants are in full and free competition with all other defendant packers and all non-defendant packers and slaughterers both in the purchase of live stock and in the sale of meat and meat products; that these defendants are in full and free competition in all other lines of business in which they are engaged with all others so engaged; that these defendants have no monopoly in any of said businesses and do not and cannot constitute any threat or danger of monopoly; that they are not restraining trade or suppressing competition; and that there is no threat or danger that they will create a monopoly or re-

strain trade or suppress competition in any of said lines of business in the future.

6. That the profits of these defendants per dollar of sales per year from 1922 to 1929, inclusive, have ranged downward as follows:

[fol. 217]

Year	Profit per dollar of sales
1922	.0201
1923	.0176
1924	.0182
1925	.0175
1926	.0165
1927	.0132
1928	.0153
1929	.0126

that the average profit per dollar of sales made by these defendants from 1906 to 1913, inclusive, was 2.70 per cent, while from 1922 to 1929, inclusive, it declined to 1.61 per cent; that a comparison of the average profits per dollar of sales for the above-named period since the entry of this decree with such average profits for the pre-war period prior to its entry, shows that these defendants have rapidly lost ground in that respect since the entry of this decree; that a comparison of such average profit for the period since the entry of the decree with leading non-defendant meat packer competitors such as George A. Hormel & Co., who made an average profit of 3.27 per cent per dollar of sales from 1926 (the first year for which figures are available) to 1929, inclusive, while the average profit of these defendants for the same period was 1.44 per cent per dollar of sales, shows that these defendants are not growing as other well managed concerns in the industry are growing, but, on the contrary, are declining; that a further comparison of such average profit figure with available figures for large companies manufacturing and distributing groceries and other non-meat foods such as General Foods Corporation, which made an average profit of 17.31 per cent per dollar of sales from 1922 (the year of organization) to 1928, inclusive, shows that the exclusion of these [fol. 218] defendants from the field of non-meat food manufacturing and distributing is greatly to the injury of these

defendants; that the rate of profit since the entry of this decree is inadequate to keep the business of these defendants in a healthy condition, and will not attract the necessary capital for these defendants to conduct their business in the most efficient manner and render the maximum service to producers of live stock and consumers of meat; that the serious decline in profits since the entry of this decree, as shown above, has been caused by this decree because these defendants have been prohibited thereby from adjusting their business to the modern economic movements and changes in merchandising methods, such as integration, diversification, etc., as hereinabove described; and that the result of being enjoined from participating in these modern movements in industry on equality with their competitors and other citizens is vitally injuring these defendants and is a serious detriment to the public.

XV. In General

1. That except in instances where it is stated otherwise, the facts and averments hereinabove stated in this petition represent present-day economic conditions, merchandising methods, Statute Law of the United States, and interpretations thereof and changes in the same which have occurred since the entry of the original decree in this cause; that on account of such present-day and changed conditions these defendants do not and cannot monopolize the meat packing industry, nor restrain trade or commerce therein, nor constitute any threat or danger of monopolization or restraint of trade in the future; that these defendants are operating and conducting their business individually and severally and independently of others in [fol. 219] every particular and not in combination, agreement or conspiracy in restraint of trade or commerce or in any attempt to create a monopoly; that if the restrictions of this decree are removed as hereinafter prayed these defendants cannot and will not monopolize the meat packing business, nor the wholesale grocery business, nor the chain store business, nor any other line of business, nor restrain trade or commerce therein, nor constitute any threat or danger of monopolization or restraint of trade in the future; that said decree has, on account of the conditions heretofore related, become unjust, unfair, inequita-

ble and oppressive to these defendants, and it is unnecessary, substantially lessens competition, and is against the public interest; and that on account of the facts and conditions hereinabove alleged, this decree should be modified as hereinafter prayed.

2. That, while perhaps not computable in dollars and cents or with mathematical exactness, the injuries which these defendants are suffering on account of this decree are substantial and serious and directly traceable to this decree; that modern business executives are sensitive to trends in economic developments and must foresee the results of such trends and adjust their businesses accordingly; that businesses not so conducted will suffer irreparable damage and eventually perish; that the hands of these defendants are so tied by this decree that they cannot adjust their businesses to modern economic trends and changed conditions; that their situation requires relief; and that relief should be given now before the injuries are beyond repair.

3. That these defendants adopt the allegations of the "Amended Petition of Armour & Company and others for the construction, modification and amendment of the Decree of February 27, 1920" filed in this cause in so far as the same are pertinent and applicable to the case of these [fol. 220] defendants and hereby make said pertinent and applicable allegations of said Armour petition a part here the same as if written herein.

XVI. Prayer

1. Wherefore, these defendants pray that the Court will modify its said decree, entered under date of February 27, 1920, so that the parties defendant will be enabled, under such terms and conditions as the Court shall direct, (a) to own capital stock or other interests in public stockyards' market companies or stockyard terminal railroads; (b) to use or permit others to use their distributive systems and facilities; (c) to manufacture, sell or deal in commodities specified in paragraphs fourth and fifth of said decree; (d) to own and operate retail meat markets; (e) to own capital stock or other interests in public cold storage warehouses; (f) to engage in the fresh milk and cream business; and that these defendants be granted such

other and further relief as the nature of the case may require and the Court may deem just and proper in the premises.

2. And, as in duty bound, the petitioners will ever pray, etc.

Charles A. Douglas, Henry Veeder, Nelson T. Hartson, Frank J. Hogan, Attorneys for Petitioners.

[fol. 221] *Duly sworn to by W. B. Traynor. Jurat omitted in printing.*

[fol. 222] EXHIBIT "A" TO AMENDED PETITION

Excerpts from Report of April 8, 1922, on Stockyards by George Sutherland and Henry W. Anderson, Trustees, Appointed by This Court in This Case

"After due consideration and a study of such portions of the record in the above entitled cause at law upon the performance of their duties as Trustees under said plan, they determined that it would be wise for them to visit personally a number of the stockyards the stock of which was deposited under said plan and to familiarize themselves by personal investigation of the conditions surrounding said yards and the operation thereof and to secure by interview with persons conducting business in said stockyards such information as would enable them to discharge intelligently the duties imposed.

* * * * * * *

"As a result of these conferences, arrangements were perfected for your trustees, accompanied by Mr. Galloway (of the Department of Justice) and a competent stenographer, to visit the more important stockyards, inspect the same personally, and hold hearings at which it was proposed to secure information from various interests concerned as to the methods of operation prevailing at said yards, and the general conditions surrounding the same. Arrangements were also made to give notice at each of the points at which said stockyards proposed to be visited were located, of the proposed visits of your trustees and the pur-

[fol. 223] poses thereof, by notices posted at the stock-

yards and published in the local press, and by such notices to invite all persons interested in the stockyards, or doing business therein, or in any manner interested in any question affecting the duties of your trustees under said plan, as well as the leading citizens of said districts, to meet with your trustees at said stockyards and give the many information which would enable them intelligently to discharge the duties imposed upon them by said decree.

• • • • • • •

"Your trustees have not visited personally the remaining yards mentioned in said plan, as these yards are all comparatively small, and the amounts of stocks held by the Swift and Armour groups of defendants therein not large. Your trustees have, however, inquired into the methods of operation prevailing at the yards not visited, and have obtained written reports as to a number of said yards covering substantially the grounds covered by the hearings at the yards visited, and they are informed that the conditions and methods of operation prevailing at these smaller yards not visited or inspected, are substantially the same as those prevailing at the yards which your trustees visited as aforesaid. Your trustees have not, therefore, deemed it necessary to make a personal visit to these yards.

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"(2) Assignment of Space in the Yards

"Your trustees made special inquiry into the methods followed in assigning pens or space to the various commission men, traders and speculators who operated in the yards. This inquiry was especially directed to the question as to whether there was any discrimination in this regard.

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[fol. 224] "While each of the commission men, traders and speculators naturally desired to secure the best locations possible in the yard, we found no evidence of discrimination in the assignment of pens, and there was no testimony that this phase of the business was not handled with fairness and justice to all concerned,

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"(3) Weighing

"Your trustees were unable to find any ground for complaint as to the conduct of the weighing operation, and there was no suggestion that it was not fairly and justly done.

"(4) Charges and Revenues

"Your trustees found no objection to or criticism of the stockyard charges for the services rendered except in the matter of charges for feed, as to which there was some complaint with the various yards. Since no charge is made for the use of the yards by the commission men, traders and speculators, it is necessary in order to provide adequate revenue that the stockyard companies should charge a profit upon the feed used for cattle while on the yards, and this charge as well as the yardage charge, is of course charged back against the producer or shipper of the cattle. Since the farmers who are also stock raisers produced and sell the feed, the difference in the price realized by them for their feed on the market and the price charged to them for feed given their cattle in the yards is a subject of some complaint. This might possibly be relieved to some extent by making a rental charge for the pens and reducing to a corresponding degree the profit on feed, but the result to the shipper of cattle would be the same, and this would necessarily involve a complete readjustment of present [fol. 225] charges which have grown up as a result of experience, and with which the public are familiar. With the exception of some complaints as to the feed charges and, in a few instances, as to the character of the feed furnished, which latter complaints the witnesses testified were always adjusted by the stockyard companies upon proper showing, your trustees found no serious objections as to the present charges of the stockyard companies. Since the enactment by Congress of the 'Packer and Stockyards Control Act of 1921' these matters of detail administration seem to be under the control of the Secretary of Agriculture, where relief can no doubt be obtained if just ground be shown therefor.

"(4) Rendering Plants

"At each of the stockyards there is operated a rendering plant where dead animals and others not fit for marketing are converted into grease and other commercial products. Your trustees were advised that there had been some complaint of the limitation of this business to one company at each yard, and they directed their inquiries to this subject to find out if there was anything in this method of conduct of the business contrary to the law or to the decree of this Court. The evidence showed that in no instance was the rendering plant controlled by the stockyard company, and in fact your trustees found no instance in which the stockyard company had any interest in the company operating the rendering plant. Your trustees found, however, that it was the practice in all of these yards to limit this business to one company. It was claimed that this course was necessary in order to insure efficient operation of this business and to give to the stockyard company some responsible agency to which it could look for the prompt removal of [fol. 226] dead animals, which was essential to the sanitary condition of the yards. The reasons given for this method of conducting this branch of the business seemed to your trustees to be substantial and adequate, and they found nothing in the dealings between the stockyard companies and the rendering plants which they deemed a violation of the Anti-Trust Laws of the United States or of the decree of this Court.

. . . . . .

"(5) Stockyard Bank

"There is maintained and operated at the administration or exchange building at each of the stockyards visited and, as your trustees are advised, at the other company yards also, a stockyard bank. This institution leases its quarters in the administration building from the stockyards company, but in no instance did the testimony show that the stockyards company was in any wise interested in the stock of the bank, or had any control over the operation thereof.

"This bank is conducted by a separate corporation in each case for the convenience of stock raisers, commission men, traders and others doing business upon the yards, and for making loans upon cattle. Your trustees could find

nothing in the relation between these banks and the stockyard companies in violation of the Anti-Trust Laws of the United States or of the decree in this cause.

* * * * * * *

"(6) Stockyard Newspaper

"At each of the stockyards there is operated a newspaper published for the information of those interested in the cattle business and circulating generally in the territory served by these yards. This newspaper in each in-[fol. 227] stance is conducted in the administration or exchange building owned by the stockyards company, leasing its offices and quarters therein from the stockyard company. While it appeared that in some instances in the past the stockyards company had been interested in the newspaper, the testimony was that such interest where it had existed had now been disposed of, and these newspapers are now owned by individuals or separate companies not connected with the stockyards companies in any way, and the stockyards companies have no interest therein. The testimony was that the stockyard companies did not in any — control or influence the policy or operation of these papers. In a number of instances the owners or managers of these papers testified at the hearings.

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"(7) The Packing Plants

"Adjoining each of the stockyards visited by your trustees are located a number of packing plants, cattle for the operation of which are purchased upon the yards. In some instances these packing plants are located upon land owned by the stockyard company. These packing houses constitute the principal buyers for cattle upon the local yards.

"While the larger packing companies maintain packing houses at nearly all of these yards, and some of them have packing houses at every yard, there are also operated near to or within the territory served by these yards a number of so-called independent packing plants. Your trustees directed their inquiry at each yard to the question as to whether there was any discrimination by the stockyard companies against such independent plants, either in leasing land upon which to locate said plants, or in any other man-

[fol. 228] ner. The testimony both of the officers of the stockyard companies and of the managers or owners of such independent plants was unanimously to the effect that no such discrimination existed, and that the stockyard companies did everything in their power to encourage the location of plants at or near their yards, with a view to the development of their markets and resulting increase in their business.

* * * * * * * * *

"(8) Ownership of Stock by Large Packers and Effect on Competition Among Buyers on the Yards

"Your trustees directed an inquiry at each place to the question of the effect, if any, of the ownership by the large packing companies of stock in the stockyard companies upon the operations of the market, and especially upon competition between buyers upon the yards, with a view to carrying out the instruction of the decree to ascertain if there was in the management of the stockyard companies any violation of the Anti-Trust Laws of the United States or of the decree of this Court.

"The general testimony of the managers of the yards, commission men, traders, speculators, stock raisers and other persons examined by your trustees was to the effect that the ownership of stock in the stockyard companies did not and could not affect the competition among buyers on the yards, or the price of cattle sold thereon; that the sole function of the stockyards was to provide a market place for the cattle, and to take care of them while they were on the market until they were delivered to the purchaser; that the buyers, consisting of the representatives of packing houses, independent traders and speculators, were in no way under the control of the stockyard companies, except that they were all required to conform to the police regula-[fol. 229] tions for the conduct of the yards, and to conduct their business in accordance with the proper standards of business ethics or integrity. In some instances, the opinion of witnesses was expressed to the effect that there was no real competition between the larger packers, because the bids of each of the buyers were controlled by the same market conditions with which all were familiar, but the testimony was generally to the effect that there was competi-

tion in buying upon the yards, not only as between buyers for the packers, but between buyers for the packers and traders and speculators, and there was no evidence or suggestion of any unlawful combination as between the packers in this regard. It was generally conceded that the ownership of the stock in the stockyard companies had no bearing upon the question of competition between the buyers, and did not result in any discrimination by the companies in favor of the packers. There were witnesses who expressed the opinion that it was contrary to the interests of the cattle trade, and especially the cattle growers, to have the stockyards controlled by the packers, their view being that they should either be controlled by the Government or independent owners, but the large preponderance of the evidence was to the effect that the control of the stockyards by the large packers who were interested in maintaining a good market place which would attract shipments to these markets, and who were also interested in the efficient management of the yards and the proper handling of the cattle which they were to purchase and slaughter, was in the interest of the market and of the cattle trade generally.

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"The evidence of those opposed to the ownership of stock in the stockyards by the packers as a matter of policy failed, however, to disclose any facts showing that the [fol. 230] ownership of such stock was used to give to the packers any advantages as buyers upon said yards, and the overwhelming evidence of all classes of witnesses who appeared before your trustees was to the contrary.

* * * * * * *

"(9) The Management of the Yards

"Your trustees directed their inquiries especially to the management of the yards, with a view to ascertaining if there was any violation of the Anti-Trust Laws of the United States or of said decree which would require them to vote the stock for change of management.

"Nearly all of the large number of witnesses interrogated by your trustees were asked for direct statements on this subject. It was the unanimous testimony of these witnesses, regardless of their views as to the policy of the

ownership of stock in the yards by the packers, that the present management of the yards visited was excellent, and they could suggest no improvement in said management. As already indicated, the only specific complaint was as to the charges for feed, and in some few cases there was objection to the feed supplied, which latter objection, however, it was admitted had been remedied when brought to the attention of the stockyard company. Even those persons who were strongly opposed on principle to the ownership of stock in the stockyards companies by the packers, admitted that the management was good, and could suggest no improvement therein. After most careful investigation, your trustees were unable to discover anything in the present management of these yards which was in violation of the Anti-Trust Laws of the United States or of the decree of this Court in this cause.

* * * * * * *

[fol. 231] "Conclusion

"Your trustees having thus acquainted themselves with the conduct and operation of said stockyard companies and stockyard terminal railroads both by personal inspection and through the evidence of representatives of every class of persons interested in the conduct of business upon said yards to the extent and in the manner aforesaid, have reached the conclusion that said — being used in violation of the Anti-Trust Laws of the United States or of the decree of this Court entered in this cause."

Said trustees further reported as follows:

"Voting the Stock under the Plan

* * * * * * *

"As already stated, your trustees directed their investigations largely to the question of whether the stockyards or stockyard terminal railroads, or any of them, were being used in violation of the Anti-Trust Laws of the United States or of the decree of this Court in this cause, to the end that they might exercise the voting power vested in them of the stocks of the Swift and Armour groups of defendants in pursuance of the terms of said decree. Your

trustees have not been able to find or to obtain any testimony to the effect that the stockyards or stockyard terminal railroads are being used in violation of the Anti-Trust Laws of the United States or of said decree, and have therefore, under the terms of the said plan, exercised said voting power for the continuance of the management as it existed when said plan was approved by this Court."

After the resignation of the Honorable George Sutherland as trustee on account of his appointment as Justice [fol. 232] of the Supreme Court of the United States, the Honorable Henry W. Anderson under decree of this Court continued to act alone as trustee. The Honorable Henry W. Anderson held further hearings in 1923 and thereafter under date of March 21, 1923, reported to this Court on the operation and conduct of said stockyards as follows:

"In pursuance of said instructions, your trustee has endeavored to keep informed to the best of his ability as to the conduct of the business and affairs of said stockyard companies and stockyard terminal railroads during the past year, and has voted the stock of said stockyard companies deposited under said plan for the continuance of the existing management, with such changes in personnel as might be requested by the owners and depositors of said stock, since he has found nothing in said management which in his opinion was in violation of the Anti-Trust Laws of the United States or the decree of the Court in this cause."

* * * * * * *

"Conduct and Operation of the Stockyards and Stockyard Terminal Railroads

"Your trustee feel constrained to observe, however, that it was a source of gratification to find that the relations between the management of the stockyards companies and the public was so satisfactory as evidenced by the testimony of the various persons representing different branches of the industry who were examined, and it was their universal opinion that the management was good, that the business received prompt and efficient attention, and that such minor complaints as related to the price of feed, or the service rendered, which would be inevitable in a business of this kind, received the prompt attention of

[fol. 233] the management, and the objectionable conditions, if they were found to exist, were remedied.

* * * * * * *

"As to Sale of Stock Held by Swift and Armour Groups of Defendants in said Stockyard Companies in Accordance with said Plan

"Your trustees also inquired carefully into the existing sentiment in the various communities served by said stockyards with respect to requiring the sale of said stocks and the separation of the packers from any ownership of stock in said yards, or from the management of said yards. This inquiry was made with special care at Fort Worth, in which territory the sentiment in favor of the segregation of the stockyards from packer ownership was said to have been largely developed, and at Omaha where there was also some sentiment on the subject. The testimony of various witnesses representing various branches of the industry was to the effect that any sentiment which had heretofore existed for the segregation of the stockyards from packer interest or control had largely died out, and that this result had been further contributed to by the enactment and operation of the Packers and Stockyards Control Act. The only witness among the many examined who still felt that the packers should be required to sell their stock in the stockyards and the management be entirely divorced from packer interest was Mr. E. L. Burke, whose evidence will be found in the record, p. 239. He felt that the present management was good, bnt that as a matter of principle, the ownership of stock in the stockyards by the packers was bad. The Court is referred to his testimony for his views on the subject.

[fol. 234] "The evidence was universal to the effect that the stockyards company had nothing to do with the sale or handling of live stock on the yards, except to provide the facilities and service, and your trustee was unable to develop any evidence of the slightest discrimination on the part of the stockyards companies as between packers and other buyers. The testimony was also general that there was full and free competition in the purchase of live stock upon the yards at all points visited."

[fol. 235] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

AMENDED PETITION OF THE DEFENDANTS ARMOUR AND COMPANY AND OTHERS FOR THE CONSTRUCTION, MODIFICATION, AND AMENDMENT OF THE DECREE OF FEBRUARY 27, 1920—Filed April 2, 1930

The defendant Armour and Company, a corporation organized and existing under the laws of the State of Illinois; the defendants hereinafter named all of which are corporations organized and existing under the laws of the states indicated: Armour & Company, New Jersey; Armour & Company, Kentucky; Armour & Company (Ltd.), Louisiana; The Anglo American Provision Company, Illinois; Fowler Packing Company, Maine; Hammond Packing Company, Illinois; The New York Butchers Dressed Meat Company, New York; Atlantic Hotel Supply Company, Inc., New York; and the individual defendants, A. Watson Armour, Laurance H. Armour, Arthur Meeker, F. Edson White, George M. Willetts, and Frederick W. Croll, all of whom are hereinafter referred to as petitioners, present this, their amended petition for the construction, modification and amendment of the decree entered in the above en-[fol. 236] titled cause on February 27, 1920, commonly known as "Packers Consent Decree", and your petitioners respectfully allege and represent to the court the following:

(1) That the above entitled cause is a suit in equity which was instituted by means of a petition filed by the United States of America as sole plaintiff against Swift & Company, an Illinois corporation, Armour and Company, an Illinois corporation, Morris & Company, a Maine corporation, Wilson & Co., (Inc.) a New York corporation, and Cudahy Packing Company, a Maine corporation, and against certain corporations affiliated with or subsidiary to said defendants, and also against certain individuals who were officers of said corporations.

(2) That said petition in equity filed by the United States of America charged, among other things, that the defendants had acquired an unlawful monopoly in the purchase of live stock and in the sale of meats, and alleged

that the general equity powers of the court and its authority under the Sherman Anti Trust act and the Clayton act were invoked for the purpose of putting an end to said monopoly and to deprive the defendants of certain instrumentalities and facilities and to compel the defendants to desist from dealing in certain substitute foods and unrelated lines; that said petition further charged that the defendants had acquired a controlling interest in twenty-two of fifty stock yards located in the United States and of certain facilities such as terminal railways, banks, cattle loan companies, rendering plants and market papers pertaining thereto, for the purpose of furthering such unlawful monopoly; that the defendants had eliminated competition in the sale of meats and had acquired control of certain substitute foods, and that such control of substitute foods was being rapidly extended and new fields invaded, and that

"unless prevented by a decree of this court, the de-
[fol. 237] fendants will within the compass of a few years control the quantity and price of each article of food found on the American table."

(3) That the five primary defendants filed joint and several answers to said petition, on behalf of themselves and their various affiliated and subsidiary corporations and their officers, and specifically denied each and every charge of illegality of action or intent made by said petition; that on February 27, 1920, A. Mitchell Palmer, then the Attorney General of the United States, and the attorneys of record representing the defendants hereto, entered into a stipulation that the decree known as Packers Consent Decree be entered by the court without any findings of fact; that said stipulation provided in part:

"The corporation and individual defendants, while maintaining the truth of their answers and asserting their innocence of any violation of law in fact or intent, nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the government, consent to the making and entry of said decree; but this stipulation shall not constitute or be considered as an admission, and the rendition or entry of the decree, or the decree itself, shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States."

(4) That on February 27, 1920, the court entered a decree pursuant to said stipulation between the Attorney General of the United States and the attorneys for the defendants; that the court incorporated in said decree of February 27, 1920, the above quoted conditions and restrictions contained in said stipulation; that said decree does not contain any findings of fact but enjoins and restrains the defendants from

(1) Entering into any agreements in restraint of interstate trade or commerce and from monopolizing or attempting to monopolize said trade or commerce;

(2) Owning any capital stock or other interest in any [fol. 238] public stock yard market company, or any stock yard terminal railroad, or stock yard market newspaper or journal;

(3) Using or permitting anyone to use the defendants' distributing systems and facilities, including branch houses, route cars or auto trucks, for the handling or distribution of any of the articles or commodities described in said decree;

(4) Manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in, either for domestic or export trade, fish, vegetables, fruits, confectionery, soft drinks, molasses, jellies, preserves, spices, coffee, tea, chocolate, cocoa, nuts, (except peanuts) flour, sugar, rice, bread, cereals, grain, grape juice and various miscellaneous articles other than food, all of which are hereinafter referred to as unrelated lines;

(5) Owning by individual defendants 50 per cent or more of the voting stock of any corporation engaged in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of said unrelated lines, except cereals, grain, and said miscellaneous articles other than foods;

(6) Owning, operating, or conducting retail meat markets in the United States;

(7) Owning any capital stock or other interest in public cold storage warehouses in the United States;

(8) Buying, collecting, selling, transporting, distributing, or otherwise dealing in fresh milk and cream, and from owning any capital stock or other interest in any corporation or firm engaged in said business;

(9) Using any illegal trade practice in relation to the conduct of the defendants' business.

That said decree of February 27, 1920, contains mandatory provisions directing the defendants to dispose of their shares of stock in public stock yard companies, terminal railroads, market newspapers, public cold storage warehouses, and also directing the defendants to dispose of any [fol. 239] retail meat markets conducted by them and any commodities known as unrelated lines, and their interest, so far as provided by said decree, in any corporations dealing in such articles; that said decree further provides that—

"The jurisdiction of this cause be, and is hereby retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree, and *for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree.*"

(5) That the policy and purpose of the Sherman Anti-Trust Act is to prevent monopolies and combinations, agreements or conspiracies in restraint of interstate trade or commerce; that said decree of February 27, 1920 has had the effect and unless construed, modified and amended as hereinafter requested will have the future effect of substantially reducing interstate commerce and competition in the sale of said commodities known and designated as unrelated lines and in the intrastate business of selling meats at retail; that said decree of February 27, 1920, was entered by this Court upon the motion and at the request of the United States and would have been violative of said Sherman Act and therefore unlawful, if the same had been entered in a suit between private parties; that said decree contains no findings of fact and is principally injunctive and preventive in character and is based upon the supposition that the defendants to this proceeding have a monop-

oly in the buying of live stock and in the sale of meats and meat food products and have it within their power to extend such monopoly to the commodities designated as unrelated lines and will so extend the same unless restrained and prevented from dealing in such unrelated commodities by the decree of this Court.

[fol. 240] (6) That during the period of ten years which has elapsed since the entry of said decree of February 27, 1920, certain events have transpired and certain changes and additions have been made in the statute law of the United States and in the judicial interpretation thereof, and during said time conditions and marketing methods which formerly obtained in the live stock industry, the packing industry and in the production, manufacture, sale and distribution of meats and meat food products and of said unrelated lines, have undergone radical and material changes; that such subsequent events and changes in and additions to law and changes in conditions and marketing methods, establish that the suppositions upon which said decree was entered on February 27, 1920 are not true at the present time and that keen and active and extensive competition now exists in the purchase of live stock and in the sale of meats and meat food products and that a monopoly therein by these petitioners or by the defendants herein does not exist and cannot possibly be acquired or maintained by said defendants or by any of them; that such events and changes subsequent to the decree of February 27, 1920 further establish that if the restrictions of said decree which prevent the defendants to this proceeding from dealing in said commodities known as unrelated lines or in meats at retail are removed, it will not be possible for them to acquire a monopoly in any of said commodities known as unrelated lines or in the sale of meats at retail; that the entry of said defendants into such business will increase competition therein and have a tendency to prevent a dominant control therein by others; that such subsequent events and changes further establish that the decree of February 27, 1920 has served its purpose and is [fol. 241] no longer necessary for the maintenance of competitive conditions and the prevention of monopoly in the manufacture, sale and distribution of the products mentioned in said decree and under present conditions is detrimental to the public interest; that the application to your

petitioners of certain parts of said decree herein referred to is inequitable, serves no purpose recognized in law, imposes upon your petitioners an undue hardship not warranted by existing facts and conditions and is also prejudicial to the producers of live stock and to the consuming public and to public interests in general; that the foregoing allegations contained in this 6th paragraph of this amended petition are supported by said events and changes which occurred subsequent to the entry of said decree of February 27, 1920, and by present-day conditions prevailing in the live stock, packing and food industries in the United States as hereinafter stated:

The Decision of the Supreme Court in the Case of United States v. United States Steel Corporation (251 U. S. 417)

(7) That the decree of February 27, 1920 is not confined to restraints against unlawful acts which might be committed by the defendants in the manufacture and distribution of said unrelated lines, but prohibits the defendants from engaging in such business at all; that the theory of the injunction thus preventing private corporations from engaging in a private and lawful business was that the potential power of the defendants was a menace and that the defendants would acquire a monopoly unless enjoined from engaging in said business, thus disclosing that the then Attorney General of the United States was of the opinion when said decree was entered on February 27, 1920, [fol. 242] that the power to acquire a monopoly was unlawful under the Sherman Act, though the power had not been exercised; that on March 1, 1920, after the entry of said decree entered herein, the Supreme Court of the United States refused to dissolve the United States Steel Corporation, though it controlled approximately 45 per cent of the entire steel business of the United States; that in said anti-trust proceeding against the United States Steel Corporation the same Attorney General who procured the entry of the decree of February 27, 1920, advanced the same theory of law as was invoked by him in obtaining the decree of February 27, 1920; that the Court refused to sustain such contention and said in its opinion delivered on March 1, 1920:

"An industrial combination, short of a monopoly, is not objectionable under the Act merely because of its size—its

capital and power of production—or merely because of a power to restrain competition, if not exerted * * * We have seen that the judges of the District Court unanimously concurred in the view that the corporation did not achieve monopoly and such is our deduction and it is against monopoly that the statute is directed, not against an expectation of it, but against its realization and it is certain that it was not realized. The opposing conditions were underestimated. The power attained was much greater than that possessed by any one competitor—it was not greater than that possessed by all of them. Monopoly, therefore, was not achieved * * * The Government, therefore, is reduced to the assertion that the size of the corporation, the power it may have, not the exertion of the power, is an obhorrence to the law, or as the Government says, 'the combination embodied in the Corporation unduly restrains competition by its *necessary effect*, (the italics are the emphasis of the Government) and therefore is unlawful, regardless of purpose.' 'A wrongful purpose,' the Government adds, is 'matter of aggravation.' The illegality is statical, purpose or movement of any kind only its emphasis. To assent to that, to what extremes should we be led? [fol. 243] Competition consists of business activities and ability—they make its life; but there may be fatalities in it. Are the activities to be encouraged when militant, and suppressed or regulated when triumphant because of the dominance attained? To such paternalism the Government's contention, which regards power rather than its use the determining consideration, seems to conduct. Certainly conducts, we may say, for it is the inevitable logic of the Government's contention that competition must not only be free, but that it must not be pressed to the ascendency of a competitor, for in ascendency there is the menace of monopoly. * * * The Corporation is undoubtedly of impressive size and it takes an effort of resolution not to be affected by it or to exaggerate its influence. But we must adhere to the law and the law does not make mere size an offense or the existence of unexerted power an offense. It, we repeat, requires overt acts and trusts to its prohibition of them and its power to repress or punish them. It does not compel competition nor require all that is possible."

(8) That the above and foregoing decision of the Supreme Court was the first judicial interpretation of the Sherman Act by the Supreme Court in which it was held that the mere power of a corporation to achieve a monopoly was not a violation of the Sherman Act, but that the actual present existence of a monopoly was required to justify the application of the penalties provided for in the statute; that said decision of the Supreme Court was also the first judicial interpretation of the Sherman Act by that Court to the effect that a control of 45 per cent of a particular industry did not constitute a monopoly; that at the time of the entry of said decree of February 27, 1920, the defendants to this proceeding controlled substantially less than 45 per cent of the purchase of live stock and the sale of meat and meat food products in the United States; that the primary defendants to this proceeding are active competitors and that [fol. 244] your petitioners are not parties to any contracts or combinations or conspiracies in restraint of trade or commerce, but that if the business of defendants to this proceeding were consolidated, their combined business would not constitute a measure of control equal to that approved by the decision of the Supreme Court in the anti-trust proceeding against the United States Steel Corporation; that during the year 1929 the combined slaughter of live stock by all of the defendants to this proceeding constituted but 36 2/10 per cent of the total live stock slaughtered in the United States.

The Packers and Stockyards Act, 1921

(9) That on August 15, 1921, subsequent to the entry of said decree of February 27, 1920, the Congress of the United States enacted the statute commonly referred to as "Packers and Stockyards Act, 1921"; that the purpose of said Act and its scope are shown by the interpretation placed upon it in the debates in Congress prior to its passage; that Representative Haugen who was the head of the Conference Committee having the bill in charge said in Congress six days before the bill was passed:

"It gives the Secretary of Agriculture complete visitorial, inquisitorial, supervisory and regulatory power over the packers and stockyards. It extends over every ramification of the packers and stockyards transactions in con-

nection with the packing business. It provides for ample court review. The bill is designated to supervise and regulate and thus safeguard the public and all elements of the packing industry, from the producer to the consumer, without injury or to destroy any unit in it. It is the most far-reaching measure and extends further than any previous law into the regulation of private business—with few exceptions, the war emergency measure and possibly the Interstate Commerce act."*

[fol. 245] (10) That said Packers and Stockyards Act, 1921, provides that it shall be unlawful for any packer to

"(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in commerce; or

(b) Make or give, in commerce, any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject, in commerce, any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; or

(c) Sell or otherwise transfer to or for any other packer, or buy or otherwise receive from or for any other packer, any article for the purpose or with the effect of apportioning the supply in commerce between any such packers, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly in commerce; or

(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business

* Congressional Record, Vol. 61, Part 5, page 4783.

in commerce, or (2) to apportion purchases or sales of any article in commerce, or (3) to manipulate or control prices in commerce; or

(g) Conspire, combine, agree or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivision (a), (b), (c), (d), or (e).

(11) That said Packers and Stockyards Act, 1921, also provides for the regulation of stockyards and stockyard [fol. 246] dealers by the Secretary of Agriculture and requires every person engaged in buying or selling live stock or furnishing stockyard services at any stock yard within the jurisdiction of the Act, to register with the Secretary of Agriculture and to furnish reasonable bond to the Secretary of Agriculture conditioned upon the performance of his obligations; that said statute requires every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services and provides that all rates or charges made for any stockyard service by a stockyard owner or market agency shall be just, reasonable and nondiscriminatory; that said statute requires that printed schedules showing rates and charges for stockyard services be filed with the Secretary of Agriculture and kept open for public inspection at the stockyards; that no change be made in such rates and charges so filed and published except after ten days' notice to the Secretary of Agriculture and to the public and that if any such change is songht to be made, the Secretary of Agriculture may conduct a hearing with reference thereto and render a decision with respect to the lawfulness thereof, and said act empowers the Secretary of Agriculture to determine and prescribe just, reasonable and non-discriminatory rates and charges and to prohibit any other charges and to hear complaints regarding unfair practices or devices and to issue cease and desist orders with respect thereto; that said statute prescribes penalties in the form of fines and imprisonment for violations of the statute and authorizes the Secretary of Agriculture to apply to the United States District Court for the enforcement of any order made by him.

(12) That said Packers and Stockyards Act, 1921, was held to be constitutional by the Supreme Court in the case

[fol. 247] of Stafford v. Wallace, 258 U. S. 495; that in that case counsel for the United States stated the purpose of the Packers and Stockyards Act, 1921 in the following language:

"That Act is a combination of the principles embraced within both the act to regulate commerce as amended and the Sherman Anti-Trust Act. By a single statute, Congress embraced both the transportation of live stock and the commercial transactions therein in interstate commerce, including the meat-packing industries—in all their multitudinous aspects." (258 U. S. 508.)

That the broad scope of said Packers and Stockyards Act, 1921, and the complete regulation of packers and stockyards provided for is further disclosed by the opinion of the Court in Stafford v. Wallace, supra, wherein the Court said at page 513:

"The Packers and Stockyards Act of 1921 seeks to regulate the business of the packers done in interstate commerce and forbids them to engage in unfair, discriminatory or deceptive practices in such commerce, or to subject any person to unreasonable prejudice therein, or to do any of a number of acts to control prices or establish a monopoly in the business. It constitutes the Secretary of Agriculture a tribunal to hear complaints and make findings thereon and to order the packers to cease any forbidden practice."

The Decision of the Supreme Court in Wolf Packing Company v. Court of Industrial Relations of the State of Kansas, 262 U. S. 522

(13) That in 1923 the State of Kansas adopted a statute providing that the manufacture and preparation of food was a business affected with a public interest and conferring upon a court of industrial relations power to hear and determine disputes concerning wages and terms of employment in packing plants.

[fol. 248] The Attorney General of the State of Kansas, in urging the constitutionality of the statute before the Supreme Court of the United States, advanced the argument—

"Many millions of our people are wholly dependent upon the continuous and efficient operation of the packing

industry for their daily ration of meat. Millions of live stock growers are dependent upon the continuous and efficient operation of the same industry for a market for their live stock. All this has impressed with a public interest the packing industry."

In holding said statute unconstitutional, the Supreme Court in an opinion rendered June 11, 1923 said:

"There is no monopoly in the preparation of foods. The prices charged by plaintiff in error are, it is conceded, fixed by competition throughout the country at large. Food is now produced in greater volume and variety than ever before. Given uninterrupted interstate commerce, the sources of the food supply in Kansas are country-wide, a short supply is not likely, and the danger from local monopolistic control less than ever." (p. 538.)

Losses Sustained by the Defendants Subsequent to the Entry of the Decree of February 27, 1920

(14) That during the fiscal year 1921 subsequent to the entry of the decree of February 27, 1920, the defendants to this proceeding sustained losses in the operation of their business amounting to $61,001,265.89, which losses were distributed among the defendants herein as follows:

Armour and Company	$31,709,817.52
Swift & Company	7,812,291.77
Morris & Company	11,447,540.77
Wilson & Co. (Inc.)	8,462,052.77
Cudahy Packing Company	1,569,563.06

That at the time of the refinancing of Armour and Company in 1922 and the organization of Armour and Company of Delaware, as hereinafter set forth, Armour and [fol. 249] Company changed its fiscal year to end December 31 in lieu of its prior fiscal year ending the last Saturday in October; that during the fourteen months' period ending December 31, 1922, Armour and Company sustained operating losses amounting to $7,628,636.77; that in 1922 Armour and Company also deducted from its surplus an additional sum of $20,640,522.45, representing losses on foreign exchange and other items arising from war business applicable to prior years' operations but not theretofore de-

termined; that Armour and Company paid its preferred stock dividends from surplus for the years 1921 and 1922, and was unable to pay any dividends on its common stock in 1921, 1922, 1923, 1924, 1927, 1928 or 1929.

The Insolvency and Receivership of Wilson & Co. (Inc.) in 1924

(15) That Wilson & Co. (Inc.), a New York corporation, was one of the primary defendants herein and was charged by the petition with having acquired with the other defendants herein a monopoly in the purchase of live stock and in the sale of meats and meat products and with having the power of extending said monopoly to the commodities known as unrelated lines; that in the year 1924 while Wilson & Co. (Inc.) was negotiating an extension or renewal of its matured and maturing bank loans, certain creditors brought suits against Wilson & Co. (Inc.) and other creditors threatened to bring suits and to attach its properties; that on August 26, 1924, a creditor of Wilson & Co. (Inc.) filed a bill of complaint against it in the District Court of the United States for the Southern District of New York, praying for the appointment of a receiver to take charge of and conduct its business; that on August 26, 1924, Wilson & Co. (Inc.) filed its answer in said suit admitting the allegations of the bill of [fol. 250] complaint and joining in the prayer for the appointment of a receiver, and on August 26, 1924, said District Court entered an order appointing receivers to take charge of the properties and operate the business of Wilson & Co. (Inc.); that thereafter ancillary receivers of Wilson & Co. (Inc.) were appointed by the District Court in various districts where properties of Wilson & Co. (Inc.) were located and such receivers did, after the dates of their respective appointments, take charge of, manage and operate the properties and business of said Wilson & Co. (Inc.); that on August 27, 1924, creditors of Wilson & Co. (Inc.) filed a petition in bankruptcy against it in the District Court of the United States for the Southern District of New York.

The Armour-Morris Purchase and the Anti-trust Proceeding under the Packers and Stock Yards Act, 1921

(16) That on March 28, 1923, Armour and Company acquired by purchase the physical properties and business

of Morris & Company, and Morris & Company thereupon changed its name to American Food Products Company, reduced its capital stock to $1,000,000, discontinued the packing business, and became and continuously since has been, a liquidating corporation; that on February 17, 1923, before the final acquisition of the Morris & Company business and properties by Armour and Company, but after the execution of a preliminary purchase agreement with reference thereto, the Secretary of Agriculture of the United States filed a notice and complaint under the Packers and Stock Yards Act, 1921, against Armour and Company of Illinois, Armour and Company of Delaware (hereinafter referred to), J. Ogden Armour and Morris & Company; that this notice and complaint charged that the [fol. 251] purchase of Morris & Company by Armour and Company would have the tendency or effect of restraining interstate commerce and of creating a monopoly in the purchase of live stock, and in the shipment and sale of meat and other live stock products, and required the respondents to appear and show cause why a cease and desist order should not be entered by the Secretary of Agriculture; that the respondents filed answers to this notice and complaint, and hearings were held by the Secretary of Agriculture at various cities of the United States, commencing on April 30, 1923, and terminating on October 31, 1924; that more than 300 witnesses testified in said proceeding, and that the record now on file with the Secretary of Agriculture consists of more than 13,000 pages of testimony and exhibits; that on September 14, 1925, the Hon. William M. Jardine, then Secretary of Agriculture of the United States, rendered his decision and dismissed the proceeding because the charges made by the notice and complaint were not sustained by the evidence.

(17) That during the war period the government of the United States stimulated the production of live stock in order to meet national emergencies, and after the declaration of war by the United States, on April 6, 1917, virtually assumed control of the business of the large packers; that the government urged said defendants herein to run their plants to capacity, to enlarge their plants, and to sacrifice commercial requirements in order to provide the meats required to supply the abnormal export demands occasioned by the war; that this abnormal export de-

mand commenced in the year 1914 and continued long after the termination of the war on November 11, 1918; that Armour and Company expended the sum of $61,051,971.99 in enlarging and improving its packing plants and in build-
[fol. 252] ing new plants during a period of eight fiscal years ended December 30, 1922; that the period of financial and business depression following the war was particularly severe in the packing industry, and that the marked decrease of exports, the withdrawal of government demands, the cancellation of government orders, the sale of large quantities of government supplies on the markets at reduced prices, and other factors, occasioned an abrupt and severe decrease in the business of the defendants; that the volume of business of Armour and Company was reduced from $1,037,845,250 in 1919 to $547,560,375 in 1922; that the plant improvements and additions made by Armour and Company during the war period were of a substantial and permanent character, so that the capacity of the Armour and Company plants could not be reduced to a basis commensurate with its decreased volume of business; that the Armour and Company packing plants were operated at less than 50 per cent average capacity during the years 1921 and 1922, and as a result of this lack of volume Armour and Company sustained operating losses of $31,709,817.52 during the year 1921; that this great lack of volume existing in Armour and Company plants in 1921 and 1922 could not have been supplied through any ordinary solicitation of business; that the only solution was to increase the volume of business, and the only way in which volume could have been increased to the extent required was by the purchase of the business of a competitor; that for these reasons the purchase of Morris & Company was an industrial and economic necessity to Armour and Company; that on September 14, 1925, the Secretary of Agriculture rendered a report in said anti-trust proceeding and among other things, found as a fact—

"The Armour respondents allege in their answer that the capacity of Armour and Company as a result of war expansion was greatly in excess of normal requirements
[fol. 253] and that a large increase in sales was necessary to enable a normal capacity plant operation in order to prevent continued operating losses. This allegation is sus-

tained by the evidence, and the evidence further shows that economies in operation have been effected thereby and an increased volume of sales secured."

(18) That during the course of said hearing before the Secretary of Agriculture it was proved that keen and active competition exists in the buying of live stock at all public and private markets in the United States and in the sale of meats in every city, town, and village in the United States; that the Morris purchase had not lessened either the degree or amount of this competition and had not resulted in a monopoly or created in Armour and Company any power to restrain commerce or to depress or control prices, and that Armour and Company had not been guilty of any unlawful or unfair business method or practice; that the existence of such competitive conditions was proved in said proceeding by the testimony of numerous packers, wholesale and retail meat dealers, jobbers, commission men, order buyers and producers of live stock; that according to reports of the Bureau of the Census of the United States, there were in existence in 1923 in the United States, 1,397 meat packing establishments which produce products of a value of more than $5,000 per year, but in said anti-trust proceeding before the Secretary of Agriculture the government did not produce as a witness a single competitor of Armour and Company who testified that a monopoly then existed in the buying of live stock or in the sale of meats, or that Armour and Company had any power to fix or control or depress the price of either live stock or meats, or that Armour and Company had been guilty of any unfair business method or practice.

[fol. 254] (19) That on September 14, 1925, the Secretary of Agriculture of the United States entered an order in said anti-trust proceeding, and held and determined in part:

"There is not in this record sufficient evidence upon which to base a conclusion that the acquisition of the physical properties, business and good will of Morris & Company by Armour and Company was for the purpose of manipulating or controlling prices in the buying of live stock in commerce or in the sale or distribution of their products, or of creating a monopoly in the acquisition of, buying, selling, or dealing in such articles in commerce, or of restrain-

ing commerce. On the contrary, the evidence is persuasive that it was for the purpose of effecting economies in the conduct of Armour respondents' business by reducing overhead expenses and increasing the volume of sales of the finished products.

"There remains, therefore, for consideration, whether this acquisition by Armour and Company has had the effect of manipulating or controlling prices in commerce, or of creating a monopoly, in the acquisition of, buying, selling, or dealing in any articles of commerce, or of restraining commerce.

"The evidence in the record does not warrant the conclusion that the purchase by Armour and Company of the physical properties, business and good will of Morris & Company has had the effect of unduly or arbitrarily lowering prices to the shipper who sells live stock, or unduly and arbitrarily increasing the price of live stock products to the consumer who buys, or otherwise manipulating or controlling prices in commerce.

"The evidence discloses that since the acquisition of Morris & Company by Armour and Company the latter has controlled less than 25 per cent of the Federal inspected slaughter and less than that controlled by Swift & Company. The undisputed evidence shows that competition on the whole in the sale of meats and meat food products in interstate commerce has not been diminished. Consequently, the acquisition has not had the effect of creating a monopoly.

"The question still remains whether this acquisition has had the effect of restraining commerce. It is obvious that [fol. 255] the elimination from business of one competitor resulting from the acquisition of his business by another competitor extinguishes competition between the two and may tend to lessen competition in that field of business, but since the decisions of the Supreme Court of the United States in the Standard Oil and Steel cases (Standard Oil Co. v. United States, 221 U. S. 1; United States v. United States Steel Corporation, 251 U. S. 417), it has been settled law that the mere lessening of competition through the acquisition of one competitor by another does not amount to an unlawful restrain of trade or commerce. While Morris & Company has been eliminated as a competitor it does not necessarily follow that competition as a whole has

been thereby reduced. It may be said with very good reason that the merger has resulted in making of Armour & Company a more potential competitor of the largest existing packer, Swift & Company.

"As was said in the Steel case, 'the law does not make mere size an offense or the existence of unexerted power an offense,' but in order that such a combination may be declared unlawful, it must be shown to have restrained trade or commerce unreasonably or unduly, or that the power thereby acquired is being used for the accomplishment of the evil which the law was aimed to prevent. • • •

"Much evidence was introduced both by the Government and the respondents as to the effect of competition before and since the acquisition. The overwhelming weight of the testimony is in favor of the view that competition has not been materially lessened by reason thereof, either in the buying of live stock or the sale of the meat or meat products thereof. Scores of independent packers were called by the respondents and they all testified that in the handling and sale of meat and meat food products competition has been keen and active. Many large retail dealers scattered throughout the country were placed on the stand by the respondents and they testified that competition was keen and active and that no unfair practices or coercive methods had been engaged in by Armour and Company. The evidence further discloses that during the last decade [fol. 256] both the number of independent packers of substantial size and the volume of business done by them have largely increased."

The Report of the Trustees Regarding Conditions in Stock Yards

(20) That on April 12, 1921, the Hon. George Sutherland and the Hon. Henry W. Anderson were appointed trustees by this court of the capital stock owned by the Swift and Armour defendants in public stock yards companies; that thereafter said trustees, assisted by a special assistant attorney general of the United States, conducted hearings at all of the public stock yards in which either the Swift or Armour defendants had a substantial interest; that such hearings were exhaustive and were held after notice had been posted in the respective yards and pub-

lished in the press, inviting all persons interested in the stock yards or doing business therein, as well as leading citizens of said districts, to appear and testify; that in response to such notices and invitations, federal and state officials, live stock association and exchange officials, live stock market newspaper publishers, bankers, producers, commission men, and others appeared before said trustees and testified regarding conditions and practices in said stock yards; that a voluminous record of such testimony and a report thereon rendered by said trustees on April 8, 1922, were filed with this court and made a part of the record in this proceeding, and said report so rendered by said trustees on April 8, 1922, as hereinafter shown, discloses the conditions existing at said yards and what effect the ownership of or interest in said yards by said defendants has had so far as the same apply to the charges made in the Government's original petition filed herein.

[fol. 257] (21) That the reasons assigned by the petition filed in this proceeding to sustain the prayer that the court compel the defendants to dispose of their interests in stock yards, terminal railways, market and trade journals, and other facilities appurtenant to the stock yards were that the control of stock yards carried with it the power

(1) To make arbitrary charges for services rendered by the stock yards companies;

(2) To favor particular commission men in the allotment of pens;

(3) To grant monopolies to stock yards banks, cattle loan institutions, rendering plants, and terminal railways;

(4) To prevent the establishment of any new packing plants, and to hamper the growth of those in existence;

(5) To prevent the development of stock yards and limit the number of new markets and to centralize and restrict business of the stock yards controlled;

(6) To increase or diminish the flow of live stock to the market through the exclusive access to information regarding receipts and sale of live stock, and the dissemination of news through market newspapers and journals controlled by the packers.

(22) That in and by said report of April 8, 1922, the said trustees appointed by this court described the nature and extent of the various hearings held by them, and reported to this court in part as follows:

"Terminal railroads exist in connection with stock yards on all yards visited by your trustees and, as your trustees are advised, at other yards not so visited * * * These terminal railroads are under the supervision of the Interstate Commerce Commission and of the state public utility commissions within the limits of their jurisdiction. Their rates are on file with the Interstate Commerce Commission. * * *

"While each of the commission men, traders, and speculators naturally desire to secure the best locations possible [fol. 258] in the yards, we find no evidence of discrimination in the assignment of pens, and there was no testimony that this phase of the business was not handled with fairness and justness to all concerned. * * *

"Your trustees were unable to find any ground for complaint as to the conduct of the weighing operations and there was no suggestion that it was not fairly and justly done. * * *

"Your trustees found no objection to or criticism of the stock yards' charges for the services rendered except in the matter of charges for feed, as to which there was some complaint with the various yards. Since no charge is made for the use of the yards by the commission men, traders, and speculators, it is necessary in order to provide adequate revenue that the stock yards companies should charge a profit upon the feed used for cattle while on the yards, and this charge as well as the yardage charge is of course charged back against the producer or shipper of cattle. Since farmers who are also stock raisers produce and sell the feed, the difference in the prices realized by them for their feed in the market and the price charged to them for feed given their cattle in the yards is a subject of some complaint. * * *

"Since the enactment by Congress of the Packers' Stock Yards Control Act of 1921, these matters of administration seem to be under the control of the Secretary of Agriculture, where relief can no doubt be obtained if just grounds are shown therefor. * * *

"At each of the stockyards there is operated a rendering plant where dead animals and others not fit for marketing are converted into grease and other animal products. Your trustees were advised that there had been some complaint of the limitation of this business to one company at each yard, and they directed their inquiries to this subject to find out if there was anything in this method of conduct of the business contrary to the law or to the decree of this court. The evidence showed that in no instance was the rendering plant controlled by the stock yards company, and in fact, your trustees found no instance in which the stock yards company had any interest in the company [fol. 259] operating the rendering plant. Your trustees found, however, that it was the practice in all of these yards to limit this business to one company. It was claimed that this course was necessary in order to insure efficient operation of this business and to give the stock yards company some responsible agency to which it could look for the prompt removal of dead animals, which was essential to the sanitary condition of the yard. The reason given for this method of conducting this branch of the business seemed to your trustees to be substantial and adequate, and they found nothing in the dealings between the stock yards companies and the rendering plants which they deemed a violation of the anti-trust laws of the United States or of the decree of this court. * * *

"There is maintained and operated at the administration or exchange building at each of the stock yards visited and, as your trustees are advised, at the other company yards also, a stock yards bank. This institution leases its quarters in the administration building from the stockyards company, and in no instance did the testimony show that the stock yards company was in any wise interested in the stock of the bank or had any control over the operation thereof. * * *

"Your trustees could find nothing in the relations between these banks and the stock yards companies in violation of the anti-trust laws of the United States or of the decree of this court."

"In each of the stockyards there is operated a newspaper published for the information of those interested in the cattle business and circulated generally in the territory served by these yards. This newspaper in each instance

is conducted in the administration or exchange building owned by the stockyards companies, leasing its offices and quarters therein from the stockyards companies. While it appeared that in some instances in the past the stockyards companies had been interested in the newspapers, the testimony was that such interest where it had existed, had now been disposed of and these newspapers are now owned by individuals or separate companies not connected [fol. 260] with the stockyards companies in any way and the stockyards companies have no interest therein. The testimony was that the stockyards companies did not in any way control or influence the policy or operation of these papers. * * *

"Adjoining each of the stockyards visited by your trustees are located a number of packing plants, cattle for the operation of which are purchased upon the yards. In some instances these packing plants are located upon land owned by the stockyards companies. These packing houses constitute the principal buyers for cattle upon the local yards. While the larger packing companies maintain packing houses at nearly all of these yards and some of them have packing houses at every yard, there are also operated near to or within the territory served by these yards a number of so-called independent packing plants. Your trustees directed their inquiry at each yard to the question as to whether there was any discrimination by the stockyards companies against such independent plants either in leasing land upon which to locate said plants or in any other manner. The testimony both of the officers of the stockyards companies and of the managers or owners of such independent plants was unanimously to the effect that no such discrimination existed and that the stockyard companies did everything in their power to encourage the location of plants at or near their yards with a view to the development of their markets and resulting increase in their business.

* * * * * * *

"Your trustees directed an inquiry at each place to the question of the effect, if any, of the ownership by the large packing companies of stock in the stockyard companies upon the operations of the market and especially upon com-

petition between buyers upon the yards, with a view to carrying out the instruction of the decree to ascertain if there was in the management of the stockyard companies any violation of the anti-trust laws of the United States or of the decree of this Court. The general testimony of the managers of the yards, commission men, traders, speculators, stock raisers and other persons examined by your [fol. 261] trustees was to the effect that the ownership of stock in the stockyard companies did not and could not affect the competition among buyers on the yards or the price of cattle sold thereon. * * * In some instances, the opinion of witnesses was expressed to the effect that there was no real competition between the larger packers because the bids of each of the buyers were controlled by the same market conditions with which all were familiar, but the testimony was generally to the effect that there was competition in buying upon the yard, not only as between the buyers for the packers but between buyers for the packers and traders and speculators and there was no evidence or suggestion of any unlawful combination as between the packers in this regard. It was generally conceded that the ownership of the stock in the stockyards companies had no bearing upon the question of competition between the buyers and did not result in any discrimination by the companies in favor of the packers. * * *

"Your trustees directed their inquiries especially to the management of the yards with a view to ascertaining if there was any violation of the anti-trust laws of the United States or of said decree which would require them to vote the stock for change of management. Nearly all of the large number of witnesses interrogated by your trustees were asked for direct statements on this subject. It was the unanimous testimony of these witnesses, regardless of their view as to the policy of the ownership of stock in the yards by the packers, that the present management of the yards visited was excellent and they could suggest no improvement in said management. As already indicated, the only specific complaint was as to the charges for feed and in some few cases there was objection to the feed supplied, which latter objection, however, it was admitted had been remedied when brought to the attention of the stockyards companies. Even those persons who were strongly opposed on principle to the ownership of stock in the stock-

yards companies by the packers admitted that the management was good and could suggest no improvement therein. After most careful investigation your trustees were unable [fol. 262] to discover anything in the present management of these yards which was in violation of the anti-trust laws of the United States or of the decree of this Court in this cause. * * *

"Your trustees having thus acquainted themselves with the conduct and operation of said stockyard companies and stockyard terminal railroads, both by personal inspection and through the evidence of representatives of every class of persons interested in the conduct of business upon said yards to the extent and in the manner aforesaid, have reached the conclusion that said stockyards and stockyard terminal railroads are not now being used in violation of the anti-trust laws of the United States or of the decree of this Court entered in this cause."

Changes in the Capital Stock, Funded Debt, and Corporate Organization of Armour and Company and Its Subsidiaries Since the Entry of the Decree of February 27, 1920

(23) That at the time of the entry of said decree of February 27, 1920, the authorized capital stock of Armour and Company was $210,000,000.00, consisting of $60,000,000.00 7% cumulative preferred stock and $150,000,000.00 of common stock; and at said time the funded debt of Armour and Company consisted of $50,000,000.00 first mortgage 4½% gold bonds and $9,599,200.00 of 6% serial convertible gold debentures; that on July 15, 1920, Armour and Company issued and sold $60,000,000.00 of its 7% 10-year convertible gold notes, and on July 27, 1920, Armour and Company increased its authorized capital stock from $210,000,000.00 to $400,000,000.00 consisting of $100,000,000.00 of 7% cumulative preferred stock, $150,000,000.00 of Class A common stock, and $150,000,000.00 of Class B common stock; that in 1922 Armour and Company was refinanced and in connection with said refinancing a new corporation under the name of Armour and Company of Dela- [fol. 263] ware was organized under the laws of the State of Delaware and acquired ownership of a substantial part of the physical properties and assets of Armour and Company of Illinois; that in consideration of the transfer of

said properties to the Delaware corporation it issued and transferred to Armour and Company of Illinois $60,000,000.00 par value of its common stock and $60,000,000.00 par value of its 7% non-voting preferred stock; that Armour and Company of Illinois on December 29, 1922, sold said $60,000,000.00 par value of the preferred stock of Armour and Company of Delaware to the public; that at or about the time of its organization, Armour and Company of Delaware also issued and sold $50,000,000.00 par value of its first mortgage 5½% gold bonds and paid the proceeds derived from said sale to Armour and Company of Illinois; that $66,658,815 of the funds thus realized by Armour and Company of Illinois were used for the purpose of calling its outstanding gold notes of 1920 and its outstanding gold debentures of 1918 and the balance of said sum was used by Armour and Company of Illinois for the purpose of retiring current indebtedness and as additional working capital in its business; that after the completion of said refinancing in 1922 the funded debt of Armour and Company of Illinois and Armour and Company of Delaware amounted to $100,000,000 and the authorized capital stocks of the Illinois and Delaware companies amounted to $560,000,000, and the issued portions thereof, were listed and traded upon the New York and Chicago Stock Exchanges (with the exception of the common stock of the Delaware company, all of which is owned by the Illinois company).

(24) That at the present time the outstanding capital stock of the Illinois company is owned by more than 45,000 shareholders and the outstanding preferred capital stock [fol. 264] of the Delaware company is owned by more than 36,000 shareholders (an aggregate of more than 80,000 shareholders), whereas at the time of the entry of said decree of February 27, 1920, substantially all of the common capital stock of Armour and Company of Illinois was owned by members of the Armour family and the preferred stock of said company was distributed among approximately 7,400 shareholders.

(25) That, when the purchase of the business and properties of Morris & Company by Armour and Company was consummated on March 28, 1923, substantially all of said properties of Morris & Company were conveyed and trans-

ferred to The North American Provision Company, a corporation organized under the laws of the State of Illinois and a wholly owned subsidiary of Armour and Company of Delaware.

(26) That since the entry of said decree of February 27, 1920, the defendants Armour & Company, a corporation organized under the laws of the State of Texas and The Colorado Packing & Provision Company, a corporation organized under the laws of the State of Colorado, have been dissolved; that since the entry of said decree of February 27, 1920, the individual defendants, J. Ogden Armour and Charles W. Armour have died; that since the entry of said decree of February 27, 1920, the individual defendants, Robert J. Dunham and George F. Robbins, have been dismissed as defendants to this proceeding, and the defendant, Frederick W. Croll, has severed all of his connections with Armour and Company and its affiliated and subsidiary corporations and should, therefore, be dismissed as a defendant to this proceeding.

[fol. 265] The Interveners

(27) That in 1921 the Southern Wholesale Grocers Association, now known as American Wholesale Grocers Association, filed in this Court a petition for leave to intervene and procured the entry of an order permitting such intervention without notice to the United States or to any of the defendants to this proceeding; that upon learning of this action, the attorneys for the United States moved to set aside and vacate such order of intervention, but this Court refused to sustain said motion and permitted the order of intervention to remain in effect and thereafter allowed a similar intervention by the National Wholesale Grocers Association; that this Court permitted such intervention in part upon the ground that the protection afforded to the interveners by the decree of February 27, 1920 "might have been secured in a proceeding in their own name and behalf"; but your petitioners allege that a decree restraining the defendants to this proceeding from engaging in the business of selling the commodities known as unrelated lines or from selling meats at retail would be illegal and unlawful if entered in a suit instituted by a private individual or corporation and that the

said interveners could not have obtained such a decree in a proceeding instituted in their own name and behalf.

The Decision of the Interstate Commerce Commission in 1921

(28) That the interveners contended in this proceeding that the restraining clauses of the decree of February 27, 1920, prohibiting the defendants from engaging in the business of manufacturing, transporting, distributing or otherwise dealing in the commodities known as unrelated lines, were and are necessary because the defendants had an undue and illegal competitive advantage in the distri- [fol. 266] bution of said unrelated lines in that they were permitted to use and did use their refrigerator cars in transporting said commodities and thereby secured quicker and more certain deliveries than obtainable by the wholesale grocers; that subsequent to the entry of said decree of February 27, 1920, the same complaint was made before the Interstate Commerce Commission by the National Wholesale Grocers Association and the American Wholesale Grocers Association, the interveners in this proceeding, in the case of National Wholesale Grocers Association of the United States v. Director General, Alabama & Vicksburg Railway Company, et al., and in the case of Southern Wholesale Grocers Association v. Southern Railway Company, Director General as Agent, et al., 62 I. C. C. Rep. 375 (submitted January 5, 1921, decided June 22, 1921); that petitions in intervention were filed in said proceedings before the Interstate Commerce Commission by numerous wholesale grocer associations and also by the primary defendants to this proceeding and by John Morrell & Company, T. M. St. Clair & Company, Jacob E. Decker & Sons, Rath Packing Company, Iowa Packing Company, George A. Hormel & Company, and Kingan & Company, all of whom are packers and competitors of the defendants herein; that in its decision rendered on June 22, 1921, the Interstate Commerce Commission said in part:

"The gravamen of the complaints with respect to service is twofold. The complainants contend (1) that by shipping unrelated articles, as hereinafter explained, in the packers' peddler and branch-house cars with fresh meats and packing-house products, the packers obtain more

speedy transportation and more prompt delivery than if such articles were shipped by them through the carriers' freight houses in the regular merchandise cars ordinarily used by the wholesale grocers and jobbers, and (2) that the carriers unjustly discriminate against the wholesale grocers [fol. 267] in their failure to maintain less-than-carload refrigerator service to many points which are served by the packers' peddler cars. The complainants do not demand the discontinuance of the packers' peddler or branch-house cars, but ask that the packers be forbidden to ship in such cars commodities which are not the products of slaughtered animals. This demand, they say upon their brief, is the issue between the packers and the wholesale grocers in this controversy, stated in one sentence."

That the said Interstate Commerce Commission thereupon reviewed the facts in the record at great length and reached the following conclusion:

"Upon consideration of all the facts of record, we find that the practices of defendants [railroad companies] in permitting the meat packers to load certain articles of groceries in their peddler and branchhouse cars is not shown to result in undue prejudice to complainants or unduly to prefer the packer."

(29) That if the decree of February 27, 1920 is modified as hereinafter prayed so as to permit the defendants to engage in the business of dealing in said unrelated commodities, the interveners will not thereby be subjected to any unfair or illegal prejudice; that numerous packers in the United States who are competitors of the defendants but are not parties to this proceeding and are, therefore, not affected by this decree, own or operate refrigerator cars and have the right to ship and do in fact ship such unrelated commodities in said refrigerator cars and as shown by said decision of the Interstate Commerce Commission, the action of common carriers in permitting this to be done does not unduly prejudice the wholesale grocers; that since the entry of said decree of February 27, 1920, there has been a tremendous and nation-wide development of motor truck transportation in the United States; that the extensive building of hard roads and the perfection of motor-driven vehicles in the last ten years have produced

[fol. 268] radical changes in the field of transportation; that since the entry of said decree, many meat-packing concerns in the United States have acquired and are operating motor trucks provided with refrigeration; that the business of the wholesale grocer is peculiarly adapted to transportation by motor truck; that there are approximately 6,000 wholesale grocers located in approximately 2,300 cities throughout the United States, and that the great majority of such wholesale grocers respectively conduct their business or a major portion thereof within comparatively small districts easily reached by motor truck; that the products sold by said wholesale grocers are now distributed principally and in many cases almost exclusively by means of motor trucks; that the defendants to this proceeding have no advantage in the field of motor truck transportation and that the decree of February 27, 1920 is wholly unnecessary to protect the wholesale grocers against the effect of said alleged advantages in transportation, and your petitioners are informed and believe and upon such information and belief allege that the sole motive of the interveners in opposing a modification and amendment of said decree of February 27, 1920, is to avoid the increased competition which will result in the wholesale grocery business if the defendants to this proceeding are permitted to engage in the business of dealing in said unrelated commodities.

The Loss of Business by the Defendants and the Acquisition of Such Business by Their Competitors

(30) That when said decree of February 27, 1920 was entered, the last available statistics regarding the amount and percentage of live stock slaughtered by the defendants to this proceeding were for the government fiscal year ending June 30, 1919; that during said year 1919 the de- [fol. 269] fendants to this proceeding (including Wilson & Co. and Morris and Company), according to information compiled by the Secretary of Agriculture of the United States, slaughtered 69.3 per cent of all animals slaughtered in the United States under federal inspection, whereas during the government fiscal year 1929 their combined slaughter, according to figures derived from the same source amounted to 56.5 per cent of all animals slaughtered under federal inspection; that this loss in business amounting to

12.8 per cent of the total federal inspected slaughter in the United States has been acquired by competitors of these defendants; that said figures relating to federal inspected slaughter do not include animals slaughtered in intrastate packing plants or animals slaughtered on farms; that exact statistics regarding the extent of said farm and other intrastate slaughter are not obtainable but according to the best estimates available, said defendants to this proceeding slaughtered 48.2 per cent of the total of all animals slaughtered in the United States in the government fiscal year 1919 and by 1929 this percentage had decreased to 36.2 per cent; that the total slaughter of Armour and Company and its subsidiaries during the government fiscal year 1919 amounted to 18.8 per cent of the total slaughter in the United States and in the government fiscal year 1929 amounted to 12.8 per cent of the total slaughter in the United States.

Present Competitive Conditions in the Purchase of Live Stock

(31) That at the present time there are 72 public stock yards in the United States subject to the jurisdiction of the Secretary of Agriculture under the Packers' and Stock Yards Act of 1921, and in addition thereto there are numer- [fol. 270] ous private stock yards in the United States at which large quantities of live stock are bought and sold but which are not subject to the jurisdiction of the Secretary of Agriculture; that the producers of live stock in the United States dispose of their live stock by numerous methods, among which are (a) sales on the public markets either by means of direct shipments to commission men located at said markets, or by means of shipments through cooperative marketing and shipping associations, (b) by sales directly to packers which are made either by direct shipments to private yards adjacent to plants, by selling to packer country buyers, or by contract for future delivery, (c) by sales to local butchers, (d) by sales on farms to speculators or to commission men from nearby markets, (e) by auction sales, and (f) by slaughtering on farms both for home consumption and to sell as carcass meats.

That purchases on the public stock yards are made (a) by buyers in the employ of packing plants, (b) by producers who purchase animals called stockers and feeders for fur-

ther feeding, (c) by order buyers who purchase for packers not located at the particular market where purchases are made, and (d) by traders and speculators who sort and grade mixed lots of animals and deal in live stock on their own account with a view to re-selling at a profit.

(32) That the Bureau of Agricultural Economics of the Department of Agriculture of the United States maintains market reporters at many of the public live stock markets and disseminates news regarding receipts and prices several times a day by means of telegraph and radio broadcasting; that numerous private agencies render similar services and that complete and accurate information regarding the receipts of live stock, classes, grades and [fol. 271] prices, is promptly disseminated throughout the United States, particularly since the advent of the radio, which has been developed since the entry of the decree of February 27, 1920; that innumerable packers located throughout the United States keep in close touch with receipts and prices at the different public markets in the United States and place orders by telegram to order buyers located at the various markets for the purchase of their requirements of live stock; that such orders are sent to the markets where prices appear to be the most favorable to the purchaser; that the producers of live stock in the United States also keep in close touch with receipts and prices prevailing at the various public markets, and ship their live stock to the market which in their opinion is at the time, the most favorable for the sale of the particular class and grade of live stock which they have to sell; that the combined action of innnumerable packers in making purchases through order buyers at markets where prices are temporarily low and of producers in diverting shipments from such markets has the effect of producing uniformity in prices for the same classes and grades of live stock upon all of the public markets in the United States, taking into consideration differentials in freight; that this uniformity in price is largely due to the thorough and complete dissemination of market news which results in said diversion of shipments and an increase of purchases on temporarily low markets and an increase in shipments and a diversion of purchases at temporarily high markets; and that this thorough and prompt dissemination of market news has largely developed since the public stock yards

of the country were placed under the jurisdiction of the Secretary of Agriculture by the Packers' and Stock Yards Act of 1921; that by reason of these facts it would be im- [fol. 272] possible for any packer or group of packers to establish and maintain for any length of time a monopoly in the purchase of live stock; that price statistics show that the prices of live stock at particular markets are not affected by the percentage of the receipts of that market which may be purchased by any packer.

Present Competitive Conditions in the Sale of Meats and Meat Food Products

(33) That the commodity dealt in by packers is perishable, and when produced must be sold within a comparatively short time, regardless of the price obtainable; that in the sale of this perishable commodity the various types of competition encountered by the defendants to this proceeding are (a) the national packers, who owns numerous branch houses which entail a large investment and overhead and necessitate the maintenance of a particular volume of business, (b) the local slaughterer and packer, who kills and sells locally, and also sells at distant points by means of express and truck shipments when conditions are such that he can sell at such markets to an advantage, (c) the non-slaughtering packer, who either utilizes the custom killer or abattoir or buys carcass meats and manufactures and processes the same to sell at near and distant points, (d) the periodical packer, who has little or no investment and operates when conditions are favorable and discontinues operations during the periods when the relation between live stock and meat prices is such that there is no profit in the business, (e) the farm killer, who slaughters both for home consumption and to sell on nearby markets, and (f) the various selling agencies many of whom do no slaughtering or manufacturing, but sell all kinds of meats on their own account and for others in a representative capacity, which class includes the wholesale meat dealers, [fol. 273] brokers, jobbers, and consignees; that the small packer who maintains no fixed investment in numerous branch houses has a tremendous advantage over the large packer and earns more money on investment and on sales than the large packer; that the large packer maintaining a branch house in a particular city is obliged to do business

in that city, regardless of conditions prevailing in the wholesale meat market; that if such a city is glutted by excess shipments of fresh meats with a resulting decrease in price, the large packer cannot discontinue business because of the investment and continual overhead expense incurred in connection with the maintenance of such branch house, whereas the small packer, who ships by means of refrigerator car and express shipments, or by motor truck, can discontinue business in that particular city until the over-supply of the perishable commodity has been absorbed and prices restored to their former level.

The Armour-Morris Anti-trust Proceeding Instituted by the Secretary of Agriculture Established That a Monopoly in the Packing Industry is not Possible

(34) That at the hearing conducted by the Secretary of Agriculture in the anti-trust proceeding instituted as a result of the acquisition of Morris & Company by Armour and Company, heretofore referred to, it was established by the testimony of producers of live stock, packers, commission men, market reporters, and wholesale meat dealers, and it is a fact that it would not be possible for any combination of packers to create a monopoly in the packing industry for the reasons among others:

(a) That it is impossible for packers to control the supply of raw material, namely, live stock, which is produced on more than 6,000,000 farms in the United States and on the western ranges;

[fol. 274] (b) Any attempt to lower prices of live stock at any market is promptly met by a withdrawal of supplies from that market and an increase in purchases;

(c) The commodity sold is a perishable commodity;

(d) There are no patent rights involved relating to equipment, and any one can enter the business with limited capital and successfully compete with any capital invested, no matter how large;

(e) The profit which the packer makes depends upon the relation which exists from time to time between live stock prices and wholesale meat prices, and the price levels of these commodities fluctuate in about the same proportion;

that the total amount realized from the sale of all meats and by-products of the packing industry is approximately 15 per cent greater than the amount paid by packers for the live stock from which the meat and by-products are produced; that if wholesale meat prices should attain a level beyond this usual spread between live stock prices and wholesale meat prices, the producer would kill his own live stock and sell the carcasses, or the consumer of the finished product would reduce the amount of his consumption;

(f) If the prices paid for live stock should be reduced below real values, the producers of the country would discontinue the production of live stock.

Introductory Allegations Regarding the Radical and Extensive Changes in Marketing Methods Since the Entry of the Decree of 1920

(35) That fundamental and nation-wide changes in methods of marketing and distributing commodities including food products have occurred since the entry of the decree of February 27, 1920; that in 1920 and prior thereto the general method employed in marketing and distributing commodities ultimately sold at retail was from manufacturer—to wholesaler—to retailer—to consumer, and under such conditions the manufacturer, wholesaler and retailer each performed separate and distinct func- [fol. 275] tions; that since 1920 there has been a pronounced and nation-wide movement in the food industry and in many other industries to effect economies and enlarge sales and reduce the ultimate cost to the consumer; that the principal method employed to effect this result has been a consolidation of the various market functions by making food and other commodities move directly from manufacturer to consumer without the intervention of the wholesaler or independent retailer; that this change in marketing methods has been initiated both by the manufacturer in establishing retail outlets for his products and by retail stores in entering the manufacturing field and producing some or a part of the products they sell, and this in turn has compelled wholesalers, jobbers and other middlemen to create their own retail outlets and to enter the manufacturing field; that this change in marketing

methods commenced in a small way prior to 1920 and the new method of marketing and distribution existed to a comparatively insignificant extent and with little or no appreciable effect at the time of the entry of the decree of February 27, 1920, but since said date the new methods of marketing and distribution have been developed to a high degree and have attained a proportion which was not anticipated or considered reasonably possible in 1920.

(36) That the above-described trend toward integration and the elimination of the middleman has been accompanied by mass production and selling and by an enormous development of brands, particularly as to food products and also by a tendency on the part of retail stores and particularly chain stores to handle a diversified line of products; that standardized mass production and the development of brands with resulting assurance of uniform [fol. 276] quality have played a conspicuous part in developing the new distribution methods and in eliminating the middleman.

(37) That this recent trend toward integration and the elimination of the middleman is illustrated by the recent history of numerous industries; that in the drug business there were in 1927, 347 chain organizations operating 3,155 retail drug stores, and at the present time practically every large drug store chain manufactures a substantial part of the drugs it sells at retail; that chain drug stores had become so extensively established by 1928 that the Supreme Court took judicial notice thereof, saying in part, "It is a matter of public notoriety that chain drug stores in great numbers, owned and operated by corporations, are to be found throughout the United States." (Liggett Co. v. Baldridge, 278 U. S. 105, 113); that in the clothing business there were in 1927, 230 chain organizations operating 2,180 retail stores selling men's clothing and furnishings, and 215 chain organizations operating 2,036 retail stores selling women's wearing apparel; that between 1920 and 1929 the leading chain organizations selling clothing for men and women increased their sales 333 per cent, whereas wholesale firms handling the same commodity suffered an actual decrease in sales; that the large mail order con-

cerns have followed the recent trend toward integration, and Sears-Roebuck & Company now operate 70 large department stores and more than 200 smaller retail stores, and Montgomery Ward & Company during the past two years has opened 532 retail stores and has recently announced an intention to open 1,500 additional retail stores; that in 1920 there were approximately 27,000 retail chain grocery stores in the United States, whereas in the year 1929 there were in existence in the United States approxi- [fol. 277] mately 800 chain store organizations operating approximately 75,000 retail grocery stores; that between 1920 and 1929 the leading chain grocery store organizations increased their sales approximately 255 per cent, whereas the sales of the leading wholesale grocery organizations substantially decreased.

(38) That the recent change in the scope of the business of retail stores and their handling of a diversified line of products is illustrated in the modern retail chain drug store which handles food and an endless variety of commodities not formerly associated with the drug business; by the modern retail chain grocery store, which sells cigars, cigarettes, tobacco, household utensils, drug items, candy, soft drinks, hardware, and also meat products; by the modern chain cigar store which sells candy and minor drug items; by the modern chain shoe store which frequently sells hosiery and knit goods, and by the vast variety of products handled in the modern 5 and 10 cent stores.

(39) That the above described changes in marketing methods have effected economics in operation and reduced prices to the consumer; that this trend toward integration, mass selling, the handling of branded products, and of diversified lines is rapidly and continuously increasing, but that the decree of February 27, 1920 prohibits the defendants to this proceeding from adapting their businesses to the changed economic conditions; that the normal outlet in 1920 for the products manufactured by the defendants was the wholesaler whose volume has been reduced to a large degree by the trend toward integration, and the independent retailers who have been substantially reduced in number and in volume of business because of the enormous development of chain store organizations; that the decree of February 27, 1920 prevents the defendants from follow-

ing the marketing trend from manufacture to consumer and prevents the defendants from selling the unrelated commodities and developing brands therein and thus [fol. 278] neutralizing the effect of the serious loss in the business formerly done by them with the wholesaler and independent retailer; that said decree of February 27, 1920 compels the defendants to concentrate all of the tremendous overhead involved in the vast branch house and distributing system of the national packer, hereinafter particularly referred to, upon meats and meat food products alone and denies to them the opportunity to reduce costs and ultimately the price paid by the consumer by means of the utilization of this distributing system in handling commodities other than meats and meat food products.

The Development of Grocery Chain Stores Since 1920

(40) That at the time of the entry of the decree of February 27, 1920, chain grocery stores were a comparatively small factor in the sale and distribution of food products and were a negligible factor in the sale and distribution of meats; that as heretofore stated, the total number of chain grocery stores in the United States has increased from approximately 27,000 in 1920 to approximately 75,000 in 1930; that the total sales of all grocery chain stores in the United States have increased from approximately $700,000,000 in 1918 to approximately $3,500,000,000 in 1929; that according to statistics complied and published by the Federal Reserve Board, the total sales of the leading grocery chain store organizations in the United States have increased approximately 255 per cent from 1920 to 1929; that at the present time approximately 40 per cent of the retail grocery business of the United States is done by chain grocery stores; and your petitioners are informed and believe and upon such information and belief state the fact to be that the following tabulation shows with approximate accuracy the percentage of retail grocery business done in the larger cities of the United States by chain grocery stores:

[fol. 279]

Newark, N. J.	75%	Philadelphia, Pa.	65%
Jacksonville, Fla.	75%	Washington, D. C.	65%
Columbus, Ohio	73%	Jersey City, N. J.	65%
Dallas, Texas	72%	Boston, Mass.	61%
Cleveland, Ohio	70%	Detroit, Mich.	60%
Tulsa, Okla.	67%	Norfolk, Va.	60%
Memphis, Tenn.	66%	Rochester, N. Y.	60%
Nashville, Tenn.	65%	Chicago, Illinois	50%
New York, N. Y.	65%		

(41) That The Great Atlantic & Pacific Tea Company is the largest chain grocery store organization in the United States and owns and operates 62 warehouses, 32 bakeries, six salmon canneries in Alaska, five manufacturing plants, two cheese plants, and 16 meat establishments under Federal inspection; that the number of stores operated by it have increased from 4623 in 1919 to approximately 16,500 in 1929, and that its sales have increased from approximately $190,000,000 in 1919 to approximately $1,100,000,000 in 1929; that The Great Atlantic & Pacific Tea Company has no funded debt and according to its published balance sheet for the year ended February 28, 1929, it had cash on hand in the sum of $22,876,396, securities of a value of $9,058,451 and a surplus of $42,241,304, and in 1929 its profits after deductions for depreciation and Federal taxes amounted to $24,220,982.

(42) That the Kroger Grocery & Baking Company, another large chain store organization, owns and operates its own bread, cake, and cracker bakeries, coffee roasting plants and general manufacturing plants for the production of candies, spices, teas, and extracts, meat packing plants at Cincinnati and Columbus, Ohio, and a sausage factory at Detroit, Michigan; that the said Kroger Grocery & Baking Company has increased the number of retail stores operated by it from approximately 780 in 1919 to approximately 6,000 in 1930, and has increased its sales from approximately $34,600,000 in 1919 to approximately [fol. 280] $293,000,000 in 1929; that it acquired 1417 new retail stores between June, 1928, and January, 1929, and its sales in 1929 were more than 40 per cent in excess of its sales for 1928.

(43) That Safeway Stores, Inc., was organized in 1926 with 834 retail grocery stores, and now operates 2250 retail grocery stores; that its sales in 1927 amounted to approximately $69,000,000, in 1928 amounted to approximately $103,000,000, and in 1929 to approximately $213,000,000; that during the year 1929 said company opened 314 new meat markets and acquired an additional 197 meat markets by purchase and also opened or acquired 29 warehouses, 7 bakeries and 2 creameries; that such investments and expenditures made by Safeway Stores, Inc. during 1929 amounted to more than $13,500,000, and in December, 1929 said company was operating 1366 retail meat markets in connection with its grocery stores as compared with 855 meat markets operated by it in 1928; that the American Stores Company operated 1151 retail Grocery Stores in 1920, and has approximately 2600 retail grocery stores at the present time, and has increased its sales from approximately $76,400,000 in 1920 to approximately $143,000,000 in 1929; that National Tea Company operated 1627 retail grocery stores in 1929, with total sales amounting to approximately $90,500,000; that The First National Stores, Inc., recently consolidated with Mayflower Stores, owns and operates 2800 retail chain grocery stores, and did a business of approximately $107,200,000 in 1929, as compared with $75,884,639 in 1928.

(44) That the total annual sales of the chain grocery store organizations in the United States at the present time amount to approximately $3,500,000,000; that ten leading chain store organizations, operating approximately 34,000 retail stores, increased their sales from approximately $1,575,000,000 in 1928 to approximately $1,975,000,-[fol. 281] 000 in 1929; that many of said chain grocery store organizations have great financial strength and are firmly established, and that the number and strength of such organizations alone proves that no defendant to this suit, or even all of the defendants to this suit, could possibly effect a monopoly or restrain trade or commerce if permitted to engage in the business of selling meats at retail and dealing in the commodities known as unrelated lines.

Recent Consolidations and Mergers in the Food Industry

(45) That since the entry of the decree of February 27, 1920, and particularly within the last few years, there has

been a general movement on the part of food manufacturers and distributors to effect consolidations or mergers of various lines of food products, and particularly nationally advertised brands; that in 1925 The Postum Company began to enlarge its output and thereafter acquired a number of corporations engaged in various branches of the food industry; that in 1929 The Postum Company changed its name to General Food Corporation, and this company is now the owner of the following corporations and brands acquired during the years indicated:

Year	Name	Product
1925	Jell-O Company	Jell-O
1926	Igleheart Bros.	Swans Down Cake Flour
1926	Minute Tapioca Company	Minute Tapioca
1927	Walter Baker & Co., Ltd.	Walter Baker Chocolate and Cocoa
1927	Franklin Baker Co.	Franklin Baker Cocoanut
1927	The Log Cabin Products Co.	Log Cabin Syrup
1927	Richard Hellman, Inc.	Mayonnaise
1928	Cheek-Neal Coffee Co.	Maxwell House Coffee
1928	La France Manufacturing Co.	Laundry Tablets and Powder
1928	Calumet Baking Powder Co.	Baking Powder
1929	Certo Corporation	Certo Products
1929	Diamond Crystal Salt Company	Diamond Crystal Salt
1929	North Atlantic Oyster Farms, Inc.	Oysters
1929	Batchelder & Snyder Co.	Meats and Hotel Supplies
1929	Arthur E. Door Co.	Meats and Hotel Supplies
1929	William A. Doe	Meats and Hotel Supplies

[fol. 282] Your petitioners are informed and believe, and upon such information and belief state the fact to be, that the sales of the General Food Corporation for the year 1928 amounted to approximately $101,000,000, and for the year 1929 amounted to approximately $128,000,000, and that its profits for the year 1929 amounted to approximately $20,000,000; that said Batchelder & Snyder Co., acquired by the General Food Corporation in 1929, is one of the oldest and best known meat and food establishments in the United States; that it operates a curing plant, lard rendering plant, sausage factory, and smoke houses, in which 25 tons of hams, bacon, and shoulders may be handled at one smoking.

(46) That Standard Brands, Inc., was organized in the year 1929, and has acquired the Fleischman Company, manufacturers of yeast, the Royal Baking Powder Company, manufacturers of baking powder, E. W. Gillett Company, Ltd., of Canada, manufacturers of baking powder, Widlar Food Products Company, manufacturers of tea,

coffee, olives, pickles, and relishes, and Chase & Sanborn Company, manufacturers of coffee and tea; that the Fleischman Company, now owned by Standard Brands, Inc., owns 24 grain elevators located in Minnesota and South Dakota, and purchases grain largely from producers; that it manufacturers distilled vinegar, salt, and yeast, and in 1928 its sales amounted to approximately $64,000,000; that the yeast produced by the Fleischman Company is distributed through 900 direct sales agencies throughout the United States and foreign countries to more than 40,000 bakeries, hotels and public institutions and more than 250,000 grocery stores and other retail merchants.

(47) That there have been since the entry of said decree of February 27, 1920, numerous other large combinations and consolidations of food manufacturers and distributors [fol. 283] and that such concerns all handle a great many branded products which are extensively and nationally advertised, and all handle a large and diversified line of products.

Sales of Meat by Chain Stores

(48) That at the time of the entry of the decree of February 27, 1920, chain grocery stores sold practically no meats and even as late as 1925, the chain grocery store was an inconsequential factor in the retail meat trade; that within the past few years chain grocery stores have rapidly expanded into the business of selling meats and meat food products at retail; that the Great Atlantic & Pacific Tea Company did not operate any meat departments in its stores in 1920 but now has approximately 3,500 stores with meat departments, and your petitioners are informed and believe and upon such information and belief state the fact to be that said Company has commenced a program which contemplates the installation of from 5,000 to 10,000 additional meat departments in their grocery stores within the next three to five years; that said Great Atlantic & Pacific Tea Company since 1920 has acquired and is now operating 16 meat establishments under Federal inspection and in such establishments cuts, cures, processes, and otherwise prepares and manufactures meats for sale in its stores at retail; that said Kroger Grocery & Baking Company operates approximately 3,000 stores with meat departments;

that said Safeway Stores, Inc. which was organized in 1926 and in 1927 operated 289 stores having meat departments now operates more than 1,366 meat departments in connection with its chain grocery stores; that said American Stores Company now operates approximately 1,000 meat departments in its chain grocery stores; that other large [fol. 284] chain store companies have in recent years installed meat departments in many of their stores and are rapidly installing others; that at the time of the entry of the decree in this cause there were but a few hundred retail meat stores operated by chain store organizations, but that chain grocery store organizations now own and operate more than 15,000 stores in which meats are sold in combination with other food products; that such concentration of retail distribution in meat and packing-house products by chain store systems has detrimentally and seriously affected the business of said defendants herein (1) by the acquisition of packing-house and processing plants by chain stores with the result that such plants obtain the entire business of such stores and these defendants have no opportunity to compete therefor (2) by thus acquiring great buying power such chains purchase large quantities at reduced cost and thus obtain a decided advantage over independent retail meat markets who under present existing conditions are the principal customers of these defendants.

(49) That the trend in the chain grocery store business is definitely toward the establishment of general food stores as contrasted with grocery stores selling groceries alone; that during 1929 the Great Atlantic & Pacific Tea Company closed a number of its smaller grocery stores and opened in lieu thereof large combination food stores; that this trend toward the establishment of general food stores and the rapid expansion of the grocery chains into the field of retail meat distribution means that the purchasing power for retail meat distribution is rapidly becoming concentrated into a relatively small number of buyers.

[fol. 285] Chain Meat Stores Operated by Non-defendant Packers

(50) That in 1920 the sale of meats at retail by packers was negligible, but at the present time numerous meat packers who are not defendants to this suit are selling

meats at retail; that Adolph Gobel, Inc., a large non-defendant packer, processor and sausage-maker, recently expanded its business by the acquisition of several competitors, namely, A. Loeffler Provisions Company, The T. T. Keane Company, The Keane Provision Company, Geo. Kern, Inc., Merkel, Inc., B. Meyer & Son, Inc., Hertz Bros. Inc., United Sausage, Inc., and Playland Refreshment Corporation, and recently acquired the properties and business of Jacob E. Decker & Sons, (a large direct competitor of said primary defendants) located in Mason City, Iowa, which slaughters more than 600,000 hogs per year and has annual sales amounting to more than $16,000,000; that said Adolph Gobel, Inc., controls and operates 29 retail meat stores known as The Merkel Chain, and your petitioners are informed and believe and upon such information and belief state the fact to be that said Adolph Gobel, Inc., is planning to engage extensively in the retail marketing of meats in New York City and vicinity; that Hygrade Food Products Corporation which was organized in 1927, acquired eight packing plants and other meat-processing plants formerly owned by Allied Packers, Inc. (a large and direct competitor of said primary defendants), and now operates 22 retail food stores; that said Hygrade Food Products Corporation by common stock ownership is also affiliated with other retail stores, such as United Cigar Stores, Happiness Candy Stores, Neve Drug Stores, and Whelan Drug Stores, and has established and operates food and refreshment [fol. 286] stands in connection with automobile service stations operated by Beacon Oil, Inc.; that the Frye Packing Company (a direct competitor of said primary defendants) of Seattle, Washington, operates 50 retail meat stores in Seattle, and is planning to expand its chain of stores to Portland and other cities; that certain New Orleans meat packing companies either have obtained or are obtaining control of a chain of 27 retail meat markets in that city, and other non-defendant meat packers, processors and slaughterers are also selling meats at retail.

Voluntary Chains

(51) That the development of the chain store has resulted in an entirely new and very rapid development of co-operative organizations of retail grocers generally.

known as voluntary chains; that a voluntary chain is a group of retailers (each of whom owns and operates his own store) who act co-operatively or associate themselves with a wholesale grocer chiefly for the purpose of obtaining the advantages of concentrated buying and thus meeting chain store competition; that such chain stores have been created by wholesale grocers seeking to counteract a decreasing volume of business by inducing a number of retailers to concentrate purchases and have also been created by the action of retailers in organizing for the purpose of co-operative buying and advertising.

(52) That in December, 1929, there were approximately 421 such voluntary chains in the United States, of which approximately 216 are organized and managed co-operatively by retailers and approximately 205 are sponsored and directed primarily by wholesalers, and such 421 voluntary chains are scattered throughout the United States and [fol. 287] have a membership consisting of approximately 60,000 retail grocery store-; that said 60,000 grocery stores in voluntary chains are separate from and in addition to approximately 75,000 stores operated by regular chain grocery store organizations as heretofore stated, so that the regular chain store organizations and the voluntary chains combined operate approximately 135,000 grocery stores in the United States.

(53) That among such voluntary chain organizations are included the Independent Grocers Alliance, the Red & White Stores, Nation-Wide Stores, Creasey Corporation, Inc., Clover Farm Stores, and United Purity Stores; that said Independent Grocers Alliance has a membership of approximately 10,000 retail grocers affiliated with 52 wholesale grocers and does an annual business of approximately $350,000,000; that said Red & White Stores has a membership of approximately 5,500 retail grocers affiliated with 25 wholesale grocers; that said Nation-Wide Stores has a membership of approximately 2,500 retail grocers, Creasey Corporation, Inc., has 9,300 retail grocers, Clover Farm Stores, 2,000 retail grocers, and United Purity Stores, 1,200 retail grocers; that the development of said voluntary chain organizations has been rapid and nationwide; that many of said grocery stores operated in voluntary chains

sell meats at retail and that the number of voluntary chain stores is rapidly increasing.

The Profits of the Defendants as Compared with the Profits of the Leading Chain Store Organizations

(54) That the profits of the defendants to this proceeding computed upon the basis of investment and upon the basis of sales are exceedingly small and demonstrate the absence of any monopolistic control in the purchase of live stock or [fol. 288] in the sale of the products thereof; that the combined profits of the defendants to this suit during the year 1929 amounted to 4.57 per cent of their aggregate investment, whereas the Great Atlantic & Pacific Tea Company, according to its published balance sheet for 1929 earned a profit (after making deductions for depreciation and Federal taxes) of $24,220,982 upon an investment of $132,740,468, or approximately 18 per cent; that the profit of Armour and Company during the year 1929 amounted to but 3.54 per cent on its investment; that the combined net profits earned by five large grocery chains, namely, the Great Atlantic & Pacific Tea Company, Kroger Grocery & Baking Company, American Stores Company, Safeway Stores, Inc., and National Tea Company during the year 1928 averaged 2.7 on sales, as compared with an average of 1.24 on sales earned by the defendants to this suit and as compared with 1.16 per cent on sales earned by Armour and Company; that the average net profit of said five chain store organizations during 1928 was approximately 23 per cent on their aggregate net worth consisting of capital stock and surplus as compared with approximately a five per cent profit earned by the defendants to this suit on their aggregate net worth during the same year; that the average net profits of said five chain store organizations during 1928 was 16.6 per cent of the amount of their total combined assets, as compared with a profit of 5.14 per cent of investment earned by the defendants to this suit and as compared with the profit of 4.09 per cent earned by Armour and Company.

(55) That said five large chain store organizations do approximately four times as much business per dollar of fixed property as is done by said defendants, and the said Great Atlantic & Pacific Tea Company does approximately

eight times as much business per dollar of fixed property [fol. 289] as is done by said defendants; that approximately two per cent of the capital of said five chain store organizations represents borrowed money, whereas approximately 30 per cent of the money invested in the business of said defendants represents borrowed money; that according to the published balance sheet of the Great Atlantic & Pacific Tea Company for the year 1929 it had cash on hand to the extent of $22,876,396 and securities of a value of $9,058,421, whereas the balance sheet for Armour and Company for 1929 shows cash on hand to the extent of $10,742,163.24 and that the company does not own any substantial amount of securities other than its investments in subsidiary corporations.

(56) That the large chain store organizations are in a liquid and strong financial position and do business upon a very profitable basis; that in view of the large number of chain store organizations engaged in the sale of food products in the United States and the great financial worth of such concerns, the allegation of the petition in this cause that the defendants to this suit will control "the quantity and price of each article of food found on the American table" unless restrained from engaging in the business of selling unrelated commodities, is untrue and not founded on fact at the present time.

The Wholesale Grocers

(57) That the wholesale grocery business of the United States is of such volume and extent and is handled by so many widely distributed concerns that there does not exist at the present time any actual or potential danger of a monopolization of such business by any corporation or group of corporations; that there are at the present time more than six thousand wholesale grocers located in approximately twenty-three hundred different cities in the [fol. 290] United States, and such wholesale grocers do an estimated business of approximately $4,000,000,000 per year.

(58) That the injury caused to the business of the wholesale grocer by the development of the chain stores and the trend toward integration and the elimination of the whole-

saler, has been counteracted by the wholesale grocers by means of the voluntary chain organizations hereinbefore referred to and by the invasion of the manufacturing field by such wholesale grocers; that in addition to said voluntary chains, many single wholesale grocers throughout the United States own or control at the present time retail grocery and food stores; that your petitioners are informed and believe, and upon such information and belief charge the fact to be, that since the entry of the decree in this cause many wholesale grocers in the United States have begun to handle and are now handling meats and packing-house products both for sale at wholesale and at retail stores owned by such wholesale grocers or controlled by them through the medium of voluntary chains or otherwise.

(59) That practically all of the wholesale grocers of the United States are the owners of various extensively advertised and well known brands and trade names and merchandise a large percentage of their products under their own private brands; that such brands and trade names cannot lawfully be appropriated or imitated by others and products so sold under particular brands are not susceptible of monopoly by others; that the buying public has been induced, by means of national and local advertising, to make a practice of buying particular brands of food products and this practice has become so firmly imbedded in the minds of buyers that they refuse as a general rule to purchase brands not familiar to them even if offered at a reduced price.

[fol. 291] (60) That the defendants to this suit have suffered substantial losses in business during recent years because of the development of chain store organizations and the trend toward integration and that if the restrictions imposed by the decree of 1920 were removed the defendants could counteract such losses by utilizing unused distributing and sales facilities in merchandising grocery products; that the interveners in this cause and other wholesale grocers oppose the removal of such restrictions ostensibly on the ground that the transportation facilities arising from the ownership of refrigerator cars by the defendants would give them an unfair competitive advantage over the wholesale grocers; that as hereinbefore al-

leged refrigerator cars owned by packers who are not defendants to this suit are utilized for the transportation of such unrelated commodities and the Interstate Commerce Commission has held and determined since the decree of 1920 that the action of railroad companies in permitting such use of refrigerator cars by packers does not constitute an undue or unlawful prejudice to the wholesale grocer; that if any such prejudice existed when the decree in this cause was entered in 1920, such prejudice does not exist to-day because of the extensive building of hard roads and the development and perfection of motor trucks since the entry of the decree; that the business of wholesale grocers is confined to comparatively small districts and their products are particularly adapted to motor truck transportation and many wholesale grocers at the present time utilize motor trucks principally and some of them almost exclusively for the transportation of their products.

(61) That it is true that the development of the chain store and the modern trend toward integration has injuriously affected the business of the wholesale grocer but it has also injuriously affected the business of said [fol. 292] defendants; that the wholesale grocers are free to adopt methods and measures to counteract the effect of modern methods and conditions, but deny that the defendants to this suit, consisting of four packers among all of the innumerable packers of the United States, should have the right to adopt similar methods and measures to preserve and protect their own business; that the trend toward integration may in the future develop to such an extent that the wholesale grocer will be entirely eliminated as a separate and distinct factor in the merchandising system, but if such an event occurs it will not be due to the existence of a monopoly in the food industry, but to the operation of economic forces wholly beyond the scope of antitrust statutes; that if such an extensive development of the trend toward integration occurs, the wholesale grocer will disappear as a separate merchandising factor, but his property and business will be protected and preserved by engaging in the manufacturing and retail business, whereas the same development will render obsolete the vast branch house systems of the defendants to this suit and may bring about their financial destruction unless they are permitted to counteract modern tendencies

by engaging in the business of selling unrelated commodities and meats at retail; that it is inequitable to permit the wholesale grocer to intervene in an equitable action for the purpose of maintaining that competition must be restricted and restrained in the wholesale grocery field by means of a court decree even though it may result in the financial destruction of the national packers because of their inability to counteract recent economic forces by means and methods which the wholesale grocers themselves are employing.

[fol. 293] The Character of the Defendants' Business and the Function of the National Packer

(62) That the defendants to this suit are engaged principally in the business of manufacturing, distributing, and selling fresh meat and packing-house products; that Armour and Company owns and operates 19 packing plants located in the middle western states, and owns and operates 382 branch houses located in the principal cities of the United States; that the basic raw material of the packing industry is live stock which is produced on approximately 6,000,000 farms in the United States and on the western ranges; that approximately two-thirds of the live stock in the United States is produced west of the Mississippi river, whereas approximately two-thirds of the inhabitants of the United States reside east of the Mississippi river; that large or national packers having wide distributing facilities are essential to convert the surplus live stock of the agricultural areas into meats and distribute the same to the densely populated non-producing sections; that the large or national packer is also essential to perform the function or storing and carrying over supplies from seasons of surplus production to seasons of excess consumption; that the performance of such functions by the national packer requires large and scattered investments in packing plants, branch houses, refrigerator cars, and coolers; that the live stock producers of the nation are vitally interested in the continued existence and successful operations of national packers for the reason among others that anything which impairs their financial strength and competitive ability reacts unfavorably upon the prices obtainable for live stock; that during the year 1929 Armour and Company paid in cash on the dates of purchase

the sum of $643,000,000 for live stock and dairy products, and the producers of live stock in the United States are vitally interested in the preservation of the financial [fol. 294] strength and competitive power of a concern which afford a cash outlet for such an amount of live stock, and with substantial unanimity are actively in favor of the removal of the burdensome restrictions placed upon the defendants by the decree of February 27, 1920.

The Public Interest

(63) That the extent to which the public interest is involved in a modification of the decree of February 27, 1920, is convincingly disclosed by the attitude of the innumerable farmer and live stock producers associations in the United States; that in 1929, at the request of the Attorney General, the Secretary of Agriculture held public hearings on the question of the advisability of a modification of the decree of February 27, 1920; that at said hearings many officials and representatives of farm and live stock organizations appeared and testified in favor of modification of the decree as a measure essential to their welfare, and such evidence was overwhelming.

(64) That the attitude of the farmers and live stock producers of the nation is further shown by resolutions adopted by the American Farm Bureau Federation, The American National Live Stock Association, National Wool Growers Association, American Farm Congress, Arizona Cattle Growers Association, Arizona Wool Growers Association, California Cattle Mens Association, Colorado Stock Growers Association, Idaho Wool Growers Association, Kansas Live Stock Association, Missouri Live Stock Association, Montana Stock Growers Association, Montana Wool Growers Association, Cattle & Horse Raisers Association of Oregon, Nebraska Stock Growers Association, Oregon Wool [fol. 295] Growers Association, Texas and Southwestern Cattle Raisers Association, Sheep & Goat Raisers Association of Texas, Utah Horse and Cattle Growers Association, Utah Wool Growers Association, Washington Wool Growers Association, Western Marketing Association, Wyoming Stock Growers Association, Wyoming Wool Growers Association, California Wool Growers Association, Western

South Dakota Stock Growers Association, Idaho Horse and Cattle Raisers Association, Southern Livestock Association, Nevada Land and Livestock Association, Nevada State Farm Bureau Federation, Colorado-Nebraska Lamb Feeders Association, New Mexico Stock Growers Association, Interstate Organization of Meat Producers, Ohio Cooperative Livestock Association, Ohio Woolgrowers Cooperative Association and Ohio State Farm Bureau Federation; that said resolutions are 53 in number, and all favor modification of the decree of February 27, 1920.

(65) That under present marketing conditions and methods the decree of February 27, 1920 is also against the interests of the consuming public, because the entry of the defendants into the business of handling the unrelated commodities and of selling meats and meat food products at retail would operate to reduce the distributing and selling costs of the defendants and would increase competition in both the wholesale and retail fields and thus tend to bring about a reduction in prices to the public.

(66) That the requested modification of the decree of February 27, 1920, is favored by an overwhelming majority of farmers and live stock producers, packers who are competitors of the defendants, commission men, traders, speculators, order buyers, market reporters and others closely connected with the selling of live stock, and by an [fol. 296] overwhelming majority of numerous economists in the United States who have made a study of the decree and its effect under present marketing conditions; that your petitioners are informed and believe and upon such information and belief state the fact to be, that the requested modification of said decree of 1920 is also favored by an overwhelming majority of the general public and that the requested modification of said decree of 1920 is not opposed by any substantial part of the concerns engaged in any industry in the United States, with the sole exception of the wholesale grocers who opposed the modification because of a purely selfish interest and desire to restrict and limit competition in the particular business in which they are engaged.

The Injury Resulting to the Defendants under Present Marketing Conditions Because of Certain Restrictions Contained in the Decree of February 27, 1920

(67) That because of the extensive development of regular chain store organizations and voluntary chain store organizations, the purchasing power for retail meat distribution is rapidly becoming concentrated into a relatively small number of buyers; that centralized buying by large chain store organizations has substantially reduced the volume of business which otherwise would have been done by the defendants' branch houses and such volume of business has been further reduced because the volume of independent dealers has been curtailed by the development of the chain store; that the defendants' branch houses have capacities sufficient or more than sufficient to supply the requirements which were in existence at the time the branches were established; that though the volume has decreased because of modern merchandising methods, the overhead [fol. 297] incurred in the maintenance of branch houses remains the same or has increased; that selling is more difficult than before and the same staff of salesmen must be maintained; that the addition of so-called unrelated lines of food products would enable the same salesmen to obtain an increased volume of business for such branch houses and thus counteract the volume lost because of the development of the chain store.

(68) That because of a loss in the volume of branch house business, Armour and Company has been compelled to close and discontinue numerous branch houses during the past few years; that as an illustration, your petitioners refer to two Armour branch houses formerly located at Marlboro, Massachusetts, twenty-five miles from Boston; that a number of chain stores are located in this community and such local stores normally would have purchased a substantial part of their requirements from the Armour branches in Marlboro, but modern merchandising methods have resulted in such local chain stores being supplied with meats by motor truck distribution from the Boston warehouse of the chain store organizations; that Armour and Company was compelled to discontinue the operation of one Marlboro branch house on January 22, 1927 and the other on

January 26, 1929, whereas they could have been continued had Armour and Company been permitted to counteract the loss of volume by handling unrelated lines.

(69) That a further loss of volume in the business of said defendants has resulted from the practice of chain stores to handle their own brands of meat products either partially or exclusively; that such products bearing the private brands of chain stores are manufactured either at factories owned and operated by the chain organizations or under contract by outside packers; that either practice is prejudicial to the defendants because the manufacture [fol. 298] of branded goods at the factories owned by the chain store organizations means a complete loss of the business and when manufactured under contract by an outside packer under the private label or brand of the chain store organization, the outside packer is placed in a position in which the maintenance of that volume of business is dependent upon the renewal of manufacturing contracts at prices offered by the chain store organization.

(70) That when meats and meat food products are sold by the defendants to chain store organizations, large quantities are usually required by the centralized buyers representing the chains; that the products sold are highly perishable and when a chain store buyer fails to take his normal quantity, the defendants are suddenly confronted with the task of finding a new and immediate outlet before deterioration sets in and such forced sales are inevitably attended by heavy losses; that in order to avoid such situations, the defendants frequently reduce their prices to the chain buyers below prevailing market prices, with the result that they make no profit at all or an exceedingly small profit and that this situation is reflected throughout both the meat producing and live stock industries; that this condition could be avoided if the defendants were permitted to establish and maintain their own retail stores and thus provide a satisfactory outlet for perishable products.

(71) That the merger of non-defendant meat packers with chain store organizations has injured and in the future will injure the defendants, because under conditions prevailing in 1920, a part of the meat food products sold to consumers by such chain store organizations would have been purchased from these defendants; that whenever a

chain store organization engages in the operation of a [fol. 299] packing plant, that business is permanently and completely removed from the competitive field and no part of it can possibly be obtained by the defendants, whereas if the defendants were permitted to operate retail food stores, they would normally acquire a part of such business through sales directly to consumers.

(72) That in the struggle to maintain a normal volume of branch house business under present day conditions, from the sale of meat products exclusively, your petitioners are obliged frequently to reduce selling prices to a level not warranted by manufacturing costs and branch house expense and thus maintain volume of business but only at the cost of selling merchandise on an unprofitable basis.

(73) That the decree of February 27, 1920 not only prohibits the defendants from establishing retail outlets for their own products, but also denies to them the right to handle a diversified line of products in accordance with modern trends in merchandising; that the retail stores handling meat exclusively are rapidly decreasing in number and the chain store organizations and independent dealers as well are developing the modern food store with a diversified line of products; that food manufacturers other than the defendants to this suit have adapted themselves to this changed condition and are handling diversified lines so as to be in a position to obtain the business of the chain food store; that a wide distribution of diversified products results in increased sales volume and a reduction in selling expense; that one salesman can take orders for a variety of food products as well as meat exclusively; that the handling of a diversified line of products also results in a reduction of delivery costs; that these savings enable manufacturing companies handling diversified lines to lower prices both to independent retailers and to chain store buyers.

[fol. 300] (74) That because of this modern tendency toward diversified lines and general food stores, the removal of the restriction of the decree of February 27, 1920 regarding the maintenance of retail meat markets would not be effective to relieve the defendants from their present prejudiced position unless corresponding modifications are

also granted as to paragraphs 3rd, 4th and 5th of the consent decree which relate to the commodities known as unrelated lines.

(75) That under present conditions the decree of February 27, 1920 is inequitable, and unnecessarily prejudicial to the defendants because it denies to the defendants the right to engage in the lawful business of handling the unrelated lines and selling meats at retail, but does not impose like restrictions on hundreds of other packers who are competitors of the defendants and who are in as favorable or in a more favorable position than are said defendants; because it denies to the defendants the right to sell meats at retail but does not deny to chain store organizations operating retail meat markets the right to engage in the packing business; because it denies to the defendants the right to handle a diversified line of products and thus reduce selling and distribution costs; and because it denies to the defendants the right to protect their business and prevent operating losses by following new and radical and nationwide changes in marketing and distribution methods.

(76) That under prevailing conditions the decree of February 27, 1920, is against the public interest, because under the conditions now existing it restrains competition, contrary to the principles of the Sherman antitrust act; because it prevents the defendants from adopting measures which would reduce their selling and distributing costs and thus enable them to sell commodities at a lower price; [fol. 301] because it has forced the defendants and will in the future force the defendants to close and discontinue branch houses to the serious detriment of the consuming public and the independent retailer, who must have a dependable source of supply for packing-house products, and said decree of 1920 is further injurious to both defendants herein and the public interest, in that its burdensome restrictions under modern merchandising conditions may bring about the financial destruction of the vital and essential national packers.

Prayer for Relief

Wherefore your petitioners pray that the court will construe, modify and amend its said decree entered on

February 27, 1920, by dismissing this suit as to the defendant, Armour & Company, a Texas corporation, the Colorado Packing & Provision Company, a Colorado corporation, and Frederick W. Croll; and by modifying paragraphs Second, Third, Fourth, Fifth, Sixth, Tenth, Twelfth and Thirteenth of said decree, under such terms and conditions as the court shall direct so as to enable these defendants (1) to own and operate retail meat markets; (2) to own stock in stockyards companies and terminal railroads; (3) to manufacture, sell and deal in commodities hereinbefore referred to as unrelated lines and specified in paragraph fourth of said decree, and to use or permit others to use the distributive facilities of said defendants in handling said unrelated lines, and that your petitioners be granted such further and additional relief as the facts heretofore alleged may require and the court may deem just and proper.

Conrad H. Syme, Charles J. Faulkner, Jr., Nelson T. Hartson, Frank J. Hogan, Attorneys for Petitioners.

[fol. 302] *Duly sworn to by Edward L. Lalumier. Jurat omitted in printing.*

[fol. 303] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION OF INTERVENERS TO DISMISS PETITION OF SWIFT & COMPANY ET AL. AND IN THE ALTERNATIVE TO STRIKE PORTIONS THEREOF—Filed April 12, 1930

Now comes the interveners, American Wholesale Grocers Association, Henry G. Sears & Company, of Massachusetts, John Hoffman & Sons, of Wisconsin, Mason Ehrman & Company, of Oregon, J. M. Radford Grocery Company, of Texas, Southern Distributing Company, of Virginia, Hall Grocery Company, of Arkansas, Albert Mackie & Co., Ltd., of Louisiana, Hicks Company, of Louisiana, Rapides Grocery Company, Inc., of Louisiana, and Oliver Finnie Grocery Company, of Tennessee, and on the records, plead-

ings and files in said cause move the Court to dismiss the petition of defendant, Swift & Company and others, for modification of the consent decree of February 27, 1920, upon the following grounds, to-wit:

1

That it appears on the face of said petition by said defendants that they are not entitled, nor is either of them entitled, to the relief prayed for therein, nor to any relief arising from the facts alleged in said petition.

[fol. 304]

2

That it appears on the face of said petition that this Court, having heretofore entered a final decree herein and the time having expired for a review thereof and the Supreme Court of the United States having held its said decree is final and valid, has no jurisdiction to hear and determine this petition.

3

It appearing on the face of said petition that the decree sought to be modified was rendered by consent, that more than nine (9) years have expired since the entry of such decree and the consents thereto, and that the Supreme Court of the United States and this Court have held that such consent decree is valid, this Court has no jurisdiction of the subject-matter of the petition and no jurisdiction to modify or in any wise affect said decree.

4

That it appears on the face of said petition that said petition is wholly without equity.

5

For special motion to strike portions of said petition, interveners above move to strike from said petition the following:

(a) Paragraph VIII, sub-paragraphs 1 to 4, are irrelevant and impertinent and pleads no facts relevant to any issue in this case.

(b) Paragraph XIII, sub-paragraph 1, is irrelevant and impertinent and plead no facts relevant to any issue in this case.

[fol. 305] Wherefore, and for divers other good reasons of objection appearing on the face of the petition, these interveners pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to the said petition, and they humbly pray that said petition be dismissed, with reasonable costs to interveners in their behalf sustained.

Points for Argument

(a) A valid final judgment cannot be set aside for any of the reasons contained in the petition for lack of jurisdiction, said petition being filed more than nine (9) years after the entry of said judgment.

(b) A valid consent decree cannot be set aside for any of the reasons contained in the petition for lack of jurisdiction, said petition being filed more than nine (9) years after the entry of said consent decree.

(c) The petition sets up no equity.

(d) The specific parts of the petition are irrelevant and impertinent.

(Signed) Edgar Watkins, (Signed) Huston Thompson, Solicitors for Interveners. —— ——, Solicitors.

April 12th, 1930.

Service of copy of above Motion of Interveners hereby acknowledged.

(Signed) H. B. Teegarden, Solicitor for Plaintiff, Special Asst. to the Atty. General. (Signed) Chas. A. Douglas, Henry Veeder, (Signed) Nelson T. Hartson, Frank J. Hogan, Solicitors for Defendants.

[fol. 306] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION TO DISMISS PETITION OF ARMOUR & COMPANY ET AL. AND IN THE ALTERNATIVE TO STRIKE PORTIONS THEREOF—Filed April 12, 1930

Now comes the interveners, American Wholesale Grocers Association, Henry G. Sears & Company, of Massachusetts, John Hoffman & Sons, of Wisconsin, Mason Ehrman & Company, of Oregon, J. M. Radford Grocery Company, of Texas, Southern Distributing Company, of Virginia, Hall Grocery Company, of Arkansas, Albert Mackie & Co., Ltd., of Louisiana, Hicks Company, of Louisiana, Rapides Grocery Company, Inc., of Louisiana, and Oliver Finnie Grocery Company, of Tennessee, and on the records, pleadings, and files in said cause move the Court to dismiss the petition of defendant Armour & Company, and others, for modification of the consent decree of February 27, 1920, upon the following grounds, to-wit:

1

That it appears on the face of said petition by said defendants that they are not entitled, nor is either of them entitled, to the relief prayed for therein, nor to any relief arising from the facts alleged in said petition.

[fol. 307]

2

That it appears on the face of said petition that this Court, having heretofore entered a final decree herein and the time having expired for a review thereof and the Supreme Court of the United States having held its said decree is final and valid, has no jurisdiction to hear and determine this petition.

3

It appearing on the face of said petition that the decree sought to be modified was rendered by consent, that more than nine (9) years have expired since the entry of such decree and the consents thereto, and that the Supreme Court of the United States and this Court have held that such consent decree is valid, this Court has no jurisdiction of the

subject-matter of the petition and no jurisdiction to modify or in any wise affect said decree.

4

That it appears on the face of said petition that said petition is wholly without equity.

5

For special motion to strike portions of said petition, interveners above move to strike from said petition the following:

(a) Paragraph (27) wherein it is claimed that the intervener American Wholesale Grocers Association could not have obtained the consent decree, above described, in its own name, because such paragraph is in conflict with the judgment of this Court rendered more than nine (9) years next prior to the filing of the petition of Armour & Company et al.

[fol. 308] (b) The allegations in paragraphs (63) and (64) of said petition of Armour & Company et al., are irrelevant and impertinent and set up no relevant or pertinent facts.

Wherefore, and for divers other good reasons of objection appearing on the face of the petition, these interveners pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to the said petition, and they humbly pray that said petition be dismissed, with reasonable costs to interveners in their behalf sustained.

Points for Argument

(a) A valid final judgment cannot be set aside for any of the reasons contained in the petition for lack of jurisdiction, said petition being filed more than nine (9) years after the entry of said judgment.

(b) A valid consent decree cannot be set aside for any of the reasons contained in the petition for lack of jurisdiction, said petition being filed more than nine (9) years after the entry of said consent decree.

(c) The petition sets up no equity.

(d) The specific parts of the petition are irrelevant and impertinent.

Edgar Watkins, Huston Thompson, Solicitors for Interveners. —— ——, Solicitors.

April 12", 1930.

Service of copy of above Motion of Interveners hereby acknowledged.

H. B. Geegarden, Solicitor for Plaintiff, Special Asst. to the Attny. General. Conrad Syme, Chas. J. Faulkner, Nelson T. Hartson, Frank J. Hogan, Solicitors for Defendants.

[fol. 309] In Supreme Court of the District of Columbia

[Title omitted]

Motion in Behalf of the Intervenor National Wholesale Grocers Association of the United States to Dismiss Amended Petition of Swift & Company et al.—Filed April 12, 1930

Comes now National Wholesale Grocers Association of the United States, intervenor herein, and moves the court to dismiss the amended petition of defendant, Swift & Company, and others, for modification of the consent decree of February 27, 1920, upon the following grounds:

1. That said amended petition does not state facts sufficient to entitle said defendants to the relief prayed for in said amended petition, or to any relief whatsoever.

2. That said amended petition fails to show that all of the parties to said consent decree have given their consent to any modification thereof and, consequently, the court is without power to make a new agreement for the parties by granting the modification prayed for in said amended petition or any other material modification of the terms of said consent decree.

3. The court is without jurisdiction to grant said amended petition or to make any order or decree with respect thereto except to dismiss the same.

Wherefore this intervenor prays that said defendants take nothing by virtue of said amended petition, but that the same be dismissed.

William C. Breed, Frank K. Nebeker, Attorneys for Intervenor National Wholesale Grocers Association of the United States.

Service of a copy of the within motion acknowledged this 12th day of April, 1930.

Chas. A. Douglas, Henry Veeder, Nelson T. Hartson, Frank J. Hogan, Attorneys for Defendants.

[fol. 310] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION IN BEHALF OF THE INTERVENOR NATIONAL WHOLESALE GROCERS ASSOCIATION OF THE UNITED STATES TO DISMISS AMENDED PETITION OF ARMOUR & COMPANY ET AL.—Filed April 12, 1930

Comes now National Wholesale Grocers Association of the United States, intervenor herein, and moves the court to dismiss the amended petition of defendant, Armour & Company, and others, for modification of the consent decree of February 27, 1920, upon the following grounds:

1. That said amended petition does not state facts sufficient to entitle said defendants to the relief prayed for in said amended petition, or to any relief whatsoever.

2. That said amended petition fails to show that all of the parties to said consent decree have given their consent to any modification thereof and, consequently, the court is without power to make a new agreement for the parties by granting the modification prayed for in said amended petition or any other material modification of the terms of the consent decree.

3. The court is without jurisdiction to grant said amended petition or to make any order or decree with respect thereto except to dismiss the same.

Wherefore this intervenor prays that said defendants take nothing by virtue of said amended petition, but that the same be dismissed.

William C. Breed, Frank K. Nebeker, Attorneys for Intervenor National Wholesale Grocers Association of the United States.

Service of a copy of the within motion acknowledged this 12th day of April, 1930.

Conrad H. Syme, Chas. J. Faulkner, Nelson T. Hartson, Frank J. Hogan, Attorneys for Defendants.

[fol. 311] In Supreme Court of District of Columbia

Opinion of Court on Motion to Dismiss Amended Petitions—Filed June 28, 1930

The American Wholesale Grocers Association and other intervenors in this case have moved to dismiss the amended petitions of Swift & Co., et al., and Armour & Co., et al., which seek certain modifications and amendments of the consent decree of February 27, 1920, based upon certain subsequent economic and financial developments. The grounds of these motions are in substance that the court is without power or jurisdiction to modify or amend a final decree entered more than nine years ago, and in particular has no power or jurisdiction to modify or amend a consent decree, and finally that the facts stated in the amended petitions are insufficient to justify the court in modifying the consent decree even if the court had the power. The United States has not moved to dismiss these amended petitions and does not raise any question of the power of the court to grant the relief prayed, but has answered in the following language:

"Comes now the United States of America and for answer to the amended petition for modification of the consent decree of 1920 hereinbefore filed by Swift & Co., et al., April 2, 1930, says, that so far as the matters set forth in said petition may be construed to amount to allegations of fact upon which petitioners may lawfully base their claims for relief, the United States is without sufficient knowledge of

said matters to form a belief, and therefore denies the same and challenges the defendants to strict proof thereof."

Mr. Justice Stafford, in his opinion upon the question of the right of the interveners to be made parties in this [fol. 312] case, said:

"Without deciding that the petitioners have an undeniable legal right to intervene, it is considered that upon the facts alleged in their petitions it is fair and just that they should be allowed to intervene, not to take control of plaintiff's side of the proceedings but for the limited purpose stated in their petitions; namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it." etc.

In the order permitting the intervention in this case it is stated that, "leave to intervene herein is granted • • • to be heard in opposition to any proposed changes in the consent decree which would deprive the interveners of the protection now afforded by said decree."

The consent decree itself provides, "that jurisdiction of this case be, and is hereby retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree, and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree."

Both the consent decree and the order permitting intervention evidently contemplated that modifications may thereafter be made in the consent decree by order of the court, although the nature and extent of these modifications are not defined, nor whether modifications may be made without the consent of the original parties to the decree. But in my opinion it is not necessary at the present time to [fol. 313] decide upon the power of the court to modify the consent decree without the consent of the parties to it. If after a full hearing the Government should become convinced that the decree should in justice to the defendants be modified, and should consent to the modification, the refusal of the interveners to consent would not in itself prevent the court from modifying the consent decree if the court should take the same view as the Government upon the facts presented to it. The interveners will, of course, have the right "to be heard in opposition to any proposed

change in the consent decree which would deprive them of the protection now afforded by said decree", but they are not entitled "to take control of the plaintiff's side of the proceedings."

As to the sufficiency of the facts stated in the amended petition for modification they involve questions of such economic and financial complexity that their effect can be determined with much more certainty after a full hearing on the merits, and the final determination by the court may largely depend upon whether after such hearing the Government will consent to or oppose the proposed modifications.

For these reasons the motions to dismiss the amended petitions of Swift & Co., et al., and Armour & Co., et al., will be overruled.

Jennings Bailey.

[fol. 314] IN SUPREME COURT OF DISTRICT OF COLUMBIA

[Title omitted]

ORDER OVERRULING MOTIONS TO DISMISS THE AMENDED PETITIONS OF ARMOUR & COMPANY AND SWIFT & COMPANY AND OTHERS—Filed July 3, 1930.

This cause duly came on to be heard at this term of the court on the motions of the National Wholesale Grocers Association of the United States and the American Wholesale Grocers Association, and others, interveners herein, to dismiss the amended petitions of the defendants Armour & Company and Swift & Company and others, for modification of the Consent Decree of February 27, 1920, and after argument by counsel for the respective parties and interveners, and after consideration by the court, it is, this 3d day of July, 1930, hereby—

Ordered, that the said motions be and the same are hereby severally overruled, with leave to the interveners, the National Wholesale Grocers Association of the United States and the American Wholesale Grocers Association, to answer the said amended petitions on the merits within twenty (20) days from this date. To all of which interveners except and in open court pray that their exceptions be allowed, and it is so ordered.

By the Court:

Justice Bailey, Associate Justice.

We have no objection to the form of the above order. H. B. Teegarden, Special Assist. to the Attny. General, Attorneys for the United States of America. Frank K. Nebeker, Attorney for National Wholesale Grocers Association of the United States. Edgar Watkins, Mac Asbill, Attorneys for American Wholesale Grocers Association.

[fol. 315] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

CONSENT OF NEW ENGLAND DRESSED MEAT AND WOOL COMPANY AND OTHERS TO MODIFICATION OF DECREE—Filed April 18, 1930.

Come now New England Dressed Meat and Wool Company, North Packing and Provision Company, The Sperry & Barnes Company, John P. Squire & Company, (Maine), John P. Squire & Company, Inc. (Mass.), John P. Squire & Company, Inc. (R. I.), Springfield Provision Company, White, Pevey & Dexter Company, Western Meat Company, Oakland Meat & Packing Company, and Nevada Packing Company, corporations, defendants in the above-entitled cause, and consent to the modifications of the decree entered in this cause on the 27th day of February, 1920, as prayed in the amended petitions filed in this cause by Armour & Company and others and by Swift and Company and others, defendants in this cause.

Henry Veeder, Counsel for New England Dressed Meat and Wool Company, North Packing & Provision Company, The Sperry & Barnes Company, John P. Squire & Company (Maine), John P. Squire & Company, Inc. (Mass.), John P. Squire & Company, Inc. (R. I.), Springfield Provision Company, White, Pevey & Dexter Company, Western Meat Company, Oakland Meat & Packing Company, Nevada Packing Company, 33 South Clark Street, Chicago, Illinois.

Dated —— —, ——.

[fol. 316] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER BY THE UNITED STATES TO THE AMENDED PETITION OF SWIFT & COMPANY ET AL. FOR MODIFICATION OF THE CONSENT DECREE OF 1920—Filed April 12, 1930

Comes now the United States of America, and for answer to the amended petition for modificaton of the Consent Decree of 1920 hereinbefore filed by Swift & Company, et al., April 2, 1930, says that so far as the matters set forth in said petition may be construed to amount to allegations of fact upon which petitioners may lawfully base their claim for relief, the United States is without sufficient knowledge of said matters to form a belief, and therefore denies the same and challenges the defendants to the strict proof thereof.

John Lord O'Brian, The Assistant to the Attorney General. H. B. Teegarden, Special Assistant to the Attorney General.

Service of the foregoing answer is hereby acknowledged this 12th day of April, 1930.

Chas. A. Douglas, Henry Veeder, Nelson T. Hartson, Frank J. Hogan, N. T. H., Counsel for Petitioner.

[fol. 317] [File endorsement omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER BY THE UNITED STATES TO THE AMENDED PETITION OF ARMOUR & COMPANY ET AL. FOR MODIFICATION OF THE CONSENT DECREE OF 1920—Filed April 12, 1930.

Comes now the United States of America, and for answer to the amended petition for modification of the Consent Decree of 1920 hereinbefore filed by Armour & Company, et al., April 2, 1930, says that so far as the matters set

forth in said petition may be construed to amount to allegations of fact upon which petitioners may lawfully base their claim for relief, the United States is without sufficient knowledge of said matters to form a belief, and therefore denies the same and challenges the defendants to the strict proof thereof.

John Lord O'Brian, The Assistant to the Attorney General. H. B. Teegarden, Special Assistant to the Attorney General.

Service of the foregoing answer is hereby acknowledged this 12th day of April, 1930.

Conrad Syme, Chas. J. Faulkner, Nelson T. Hartson, Frank J. Hogan, N. T. H., Counsel for Petitioner.

[fol. 318] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF AMERICAN WHOLESALE GROCERS' ASSOCIATION ET AL. TO THE AMENDED PETITION TO MODIFY OF SWIFT & COMPANY ET AL.—Filed July 3, 1930

Come now American Wholesale Grocers' Association, and the persons, firms, and corporations joining in the intervention filed in this cause September 10, 1921 and without waiving their motion, general and special, to dismiss the petition of Swift & Company and those joining with it in its amended petition to modify but insisting on said motion and contending that this court is without jurisdiction of said petition, and insisting that said petition shows no equitable reason for the relief prayed or any part thereof, and reiterating the special grounds of their motion directed to impertinencies in said petitions, respectfully say:

1. For convenience the interveners answering herein will be called Interveners, and Swift & Company and those joining with it in its petition to modify will be called the Swift Defendants.

2. The Swift Defendants herein should not be permitted to maintain this petition for that they are estopped under the facts in this case from so doing.

Said Swift Defendants for good and valuable considerations voluntarily agreed to the Decree of February 27, 1920, entered in this court and have received such con- [fol. 319] siderations, among others the following:

(a) Prior to the entry of said consent decree, and to the knowledge of the Swift Defendants, the Federal Trade Commission and special counsel employed by the Department of Justice had, after hearings and study, concluded and reported that said defendants were in violation of the Anti-Trust laws of the United States; that the Attorney General of the United States then in office had by presenting witnesses to the Grand Jury in the United States District Court at Chicago, Ill., and in proposing the same course in New York, N. Y., sought and was seeking criminal indictments against said defendants; that said Attorney General was preparing to file suits in equity against said defendants to enjoin the continuation of said violations and to dissolve the said corporate defendants and to have appointed a receiver or receivers for all their assets used in such violations; and that because of the contract for a consent decree offered and made by said defendants, such criminal prosecutions and such equity suits were all discontinued on and after the contract for said consent decree was made, and now and when the petition of defendants was filed, rights of action, both criminal and civil for the offenses then involved are and were barred by the statutes of limitation.

(b) Because as a result of the entry of said decree of February 27, 1920, said Swift defendants were enabled to and did intervene in that certain proceedings then pending before the Interstate Commerce Commission entitled—Southern Wholesale Grocers' Association vs. certain railroads therein named, and that certain other proceedings entitled National Wholesale Grocers' Association vs. certain railroads therein named and other persons therein named, and did by intervention plead as an answer to the [fol. 320] complaints therein and to the allegations that said Swift defendants enjoyed unlawful privileges in rates, rules and practices, that the said consent decree had terminated the competition between wholesale grocers and said Swift defendants, and that by reason of said decree complainants in said complaints before the Interstate Com-

merce Commission were not entitled to any relief, and because of such decree so pleaded by said Swift defendants substantial relief on said complaints was denied by the Interstate Commerce Commission to the advantage of said Swift defendants and said Commission in its report reported in Vol. 62 I. C. C. Reports, at page 375 thereof, sustained in whole or in part said contentions of the Swift defendants.

(c) Because by reason of the entry of said consent decree the Congress of the United States refrained from passing more stringent regulatory laws than would otherwise have been passed and in the enactment of the Packers' and Stockyards' Act of 1921 gave force and effect to said consent decree by making said act less inclusive than it otherwise would have been.

(d) That Interveners here could have, prior to the entry of said consent decree, filed in their own name and behalf suits at law and equity to enforce against said Swift defendants their rights for special injuries caused by the violation by said defendants of the Anti-Trust laws aforesaid, all of which rights interveners abandoned because of the entry of said decree and such rights are now and were when the Petition to Modify herein was filed, barred by the statutes of limitation.

For each and all of the foregoing reasons said Swift defendants having knowingly obtained the advantages and considerations aforesaid, are estopped from prosecuting any efforts or proceedings, especially the efforts set up in their amended petition, now before the court, to modify [fol. 321] the consent decree.

3. That said Swift defendants do not come into this court of equity with clean hands but have so conducted themselves as not to entitle them to any relief in a court of equity, said defendants being now and at all times since the entry of said decree of February 27, 1920 in violation thereof, and especially in the following particulars, to-wit: That said Swift defendants have continued to purchase the items referred to in paragraphs 4 and 5 of said consent decree and have not complied with the orders of this Court in that they have by purchase and otherwise put themselves in a position where it will be more difficult for them

to comply with the decree if and when the provisional modification now in force is terminated; that said Swift defendants in pursuance of their unlawful practices have continued to demand and receive from the carriers, especially the carriers in western trunk line territory preference in the rates, rules, and practices of such carriers and are now receiving rate adjustments from such carriers that are unreasonable and unjust and, as interveners are informed and believe, are in violation of the law in that in conflict with the applicable tariffs they are receiving rates on packer or peddler cars on shipments of less than the minimum weight required in such tariffs; that said Swift defendants are further openly and contemptuously in violation of the decree herein and the Anti-Trust laws of the United States in that as interveners are informed and believe they are through a corporaton known as the Mechanical Manufacturing Company owned by said defendants or at least controlled by them, exerting the influence of a large shipper by seeking to coerce and compel carriers to purchase the products of said Company, thereby carrying out their continuing plan of obtaining for themselves special privileges and advantages. For each and all of said reasons said Swift & Company, defendants, are not [fol. 322] entitled to maintain this suit and relief should be denied them.

4. In the amended petitions herein of said Swift defendants there is such an intermixture of prophesy, opinions and conclusions with a small proportion of facts that an answer thereto is difficult and these interveners deny each and every of the allegations of fact, conclusions, opinions, and prophesy contained in said petitions, unless hereinafter specifically admitted.

5. Referring in detail to the amended petitions of said Swift defendants and to the preliminary paragraphs thereof in which it is alleged that there have been radical and revolutionary changes since the entrance of the consent decree in economic conditions, merchandising methods, etc., these interveners deny the same as alleged and say that such changes, if any there be, have been a natural and orderly economic development differing if at all only in degree from changes prior to 1920, and in no way do such changes, if any, affect the question involved in the bill of complaint

of the United States herein on which said consent decree was entered.

6. Answering sub-paragraph 1 of paragraph I of said Swift & Company defendants, the same is denied.

7. Answering sub-paragraph 2 of said paragraph I, the same is denied, except as to the allegations relating to the practices of manufactures entering into retail outlets and retailers entering into manufacturing fields as to which and as to the extent of which interveners being without information can neither admit nor deny the same but demand strict proof thereof.

8. Answering sub-paragraphs 3 and 4 of paragraph I, these interveners say that the allegations therein are irrelevant to the issues herein, but should they be held to be relevant in any way, there is presented but a question of [fol. 323] opinion as to which these interveners are without information and can, therefore, neither admit nor deny same but demand strict proof, should it be held that said paragraphs are material.

9. Answering sub-paragraph 5 of paragraph I, interveners say that as to all the allegations thereof except the last three lines, they have no accurate information and can therefore neither admit nor deny the same and demand strict proof thereof. As to the last three lines the same are denied and if there is the use of brands as alleged the same existed at the time of the entry of the consent decree.

10. Answering sub-paragraphs 6, 7, 8, 9, and 10 of paragraph I, interveners submit that the allegations therein are wholly immaterial to the issues in this cause; but if the same should be held material, they being without information can neither admit nor deny the same and demand strict proof thereof.

11. Answering sub-paragraph 11 of paragraph I, interveners submit that isofar as same is claimed as a basis for affirmative relief it is immaterial to the issues in this cause but shows, as interveners submit, an intention upon the part of said Swift defendants themselves to enter into the practices described and further to increase their monopolistic powers and their tendency to restrain trade and commerce.

12. Answering sub-paragraph 12 of paragraph I, interveners say that while they desire changes that would promote a healthy competition they deny that the changes described in the petitions of Swift & Company will promote such competition and submit as to the other portions of said paragraph that the same are immaterial; but should they be held material interveners are without information and, therefore, can neither admit nor deny the same but demand strict proof thereof.

13. Answering sub-paragraphs 1 and 2 of paragraph II, [fol. 324] interveners say that for lack of information they can neither admit nor deny the specific allegations contained therein but demand strict proof thereof. They do admit that there has been some growth since 1920 in the extent of business in the chain stores and say that such growth was reasonably foreseeable by Swift & Company, defendants, at the time they agreed to the decree of February 27, 1920, and it is believed that there is nothing in such growth justifying changes in the decree as originally entered.

14. Answering sub-paragraph 3 of paragraph II, interveners being without information can neither admit nor deny the same, except as to the last seven lines thereof which they deny.

15. Answering sub-paragraph 4 of paragraph II, interveners deny that in 1920 the chain grocery stores sold practically no meats and deny that there is the serious danger claimed in the latter part of the paragraph and say that if the trend is as claimed in said paragraph that such trend would in no wise injure said Swift & Company defendants, and as to all other portions of paragraph 4 these interveners being without information can neither admit nor deny same but demand strict proof thereof.

16. Answering sub-paragraph 5 of paragraph II, interveners say that as to the allegations of new developments therein contained interveners are without accurate information and can therefore neither admit nor deny same but demand strict proof thereof, and the allegation of serious disadvantage and danger and the allegations following same are denied.

17. Answering sub-paragraph 6 of paragraph II, interveners deny the same and the conclusions sought to be drawn from said allegations are unsound.

18. Answering sub-paragraph 7 of paragraph II, interveners say that insofar, if at all, there is a trend toward [fol. 325] integration and the elimination of middlemen said Swift & Company defendants are and have been before and since the entry of the consent decree herein participants therein.

19. Answering sub-paragraph 8 of paragraph II, as to the allegations relating to the business and profits of the named Company therein, interveners being without information can neither admit nor deny the same but demand strict proof thereof, and specifically these interveners deny that said named businesses are conducted on a more profitable basis than Swift & Company defendants and submit that there is no legal propriety in comparing the two classes of business.

20. Answering sub-paragraph 9 of paragraph II, the same is denied and interveners submit that this allegation is in part in conflict with other allegations contained in sub-paragraph 12 of paragraph II.

21. Answering sub-paragraph 10 of paragraph II, the same is denied except it is admitted that chain stores do use leaders as a form of advertising but these interveners submit that such fact is immaterial to the issues herein and if true would in no wise injure the Swift & Company defendants.

22. Answering sub-paragraph 11 of paragraph II, interveners deny that the chain store systems work a special handicap on the Swift & Company defendants and submit that if said defendants permit themselves to sell goods to the chain stores at less price than they sell to others said defendants are themselves guilty of violating the Clayton Act and the consent decree.

23. Answering sub-paragraph 12 of paragraph II, interveners being without information as to the practices of Swift & Company defendants claiming to have been forced on them since 1920, can neither admit nor deny the same but if the same should be held material demand strict proof

thereof, and as to the relative cost of doing business these interveners have no information and therefore can neither [fol. 326] admit nor deny the same but demand strict proof thereof and call upon the defendants to produce such books and accounts as will enable interveners and the court accurately to know the facts.

24. Answering sub-paragraph 1 of paragraph III interveners say that as to the allegations of dealing in meats and meat products and livestock products and butter, cheese, eggs, and poultry, being without information they can neither admit nor deny the same but demand strict proof thereof. As to the allegations relating to the consent decree herein these interveners refer to said decree as an accurate statement thereof and deny there is anything in said Decree injurious to said Swift & Company defendants and submit that the restraint therein of said defendants is necessary and proper.

25. Answering sub-paragraph 2 of paragraph III, interveners submit that insofar as such paragraph indicates there is competition with the Swift & Company defendants there is indicated a healthy condition. As to the other allegations in said paragraph interveners being without information can neither admit nor deny same but demand strict proof thereof if they be deemed material.

26. Answering sub-paragraph 3 of paragraph III interveners say that they submit the allegations are immaterial, but if held to be material interveners being without information can neither admit nor deny the same but demand strict proof thereof.

27. Answering sub-paragraph 4 of paragraph III interveners deny that the conditions therein named have caused loss or embarrassment to said Swift & Company and submit that the rest of said paragraph is immaterial to any issue herein, but if the same should be held material interveners being without information can neither admit nor deny the same but demand strict proof thereof.

[fol. 327] 28. Answering sub-paragraph 1 of paragraph IV, interveners submit that if such allegations are true they show no reason for modification of the consent decree herein but merely a change in degree, and as to such allegations interveners being without accurate information can

neither admit nor deny the same but demand strict proof thereof, and the conclusions sought to be drawn from such allegations are denied.

29. Answering sub-paragraph 2 of paragraph IV, as to the prophesy therein contained of the merger of meat packers with grocery chains, these interveners being unable to look into the future cannot admit or deny the same, but on information and belief they believe and so allege that said Swift & Company do contemplate mergers with chain stores, such belief being based upon the statement of brokers in Chicago, published in the Congressional Record of May 22, 1930, Volume 72, No. 128, page 9712. Further answering said paragraph these interveners deny that said defendants will be injured as alleged therein and say that the decree is not unfair and unjust, but is just, fair, legal, and consented to by said defendants.

30. Answering sub-paragraph 3 of paragraph IV, interveners being without information can neither admit nor deny the same except they admit that some small packers handle groceries, a condition existing at and prior to February 27, 1920, but by far the greater number of small packers do not handle groceries.

31. Answering sub-paragraph 1 of paragraph V, interveners deny the last ten lines thereof and as to the rest of said paragraph these interveners being without information can neither admit nor deny the same. Interveners admit that there are a large number of wholesale grocers, perhaps not 6,000, but say that such wholesale grocers act independently and are customers of the defendants Swift & Company.

[fol. 328] 32. Answering sub-paragraphs 2, 3, 4, and 5 of paragraph V, interveners say that they are without information as to the allegations therein, and, therefore, can neither admit nor deny same but demand strict proof thereof and specifically these interveners say that wholesale grocers are independent of each other and in no way do or can restrain commerce and interveners specifically deny that wholesale grocers selfishly oppose any modification of the decree herein, and admit that they do vigorously oppose such modification because, as interveners submit, a modification would be destructive of competition and injurious to the public.

33. Answering sub-paragraph 6 of paragraph V, interveners being without information as to the extent of the use of the facilities of Swift & Company defendants, can neither admit nor deny the allegations with reference thereto. As to all the rest of the paragraph the same is denied.

34. Answering sub-paragraph 7 of paragraph V, interveners deny the same insofar as said paragraph alleges that said Swift & Company defendants have no unfair advantage and say that the proceedings referred to in said paragraph and the evidence therein show unfair preference and advantage conceded by interstate carriers to said defendants and that the decision of the Interstate Commerce Commission was rendered as alleged, solely because of the fact as these interveners are informed and believe that prior thereto this court had entered the consent decree herein.

35. Answering sub-paragraph 8 of paragraph V, interveners deny that most of the grocers merchandise grocery products under their own private labels and brands but admit that some grocers do, but say that this condition existed at and before February 27, 1920, and these interveners submit that the use of brands would not promote or prevent monopolization or restraint of trade. Swift & [fol. 329] Company defendants use and have for years prior to 1920 used special brands.

36. Answering sub-paragraph 9 of paragraph 7, interveners say that whatever the function of chain stores is or may be such stores furnish customers to the defendants Swift & Company and interveners are informed and believe that it is the purpose and intent of said defendants themselves to become owners of, or interested in, systems of chain stores, this information being based upon the statement of brokers in the publication in the Congressional Record hereinbefore referred to.

37. Answering sub-paragraph 10 of paragraph V, interveners submit the construction thereof to the court and insofar as said paragraph contains allegations other then construction of the decree interveners submit that such allegations are expressions of opinion or prophesy and interveners being without accurate information can neither admit nor deny same but demand strict proof thereof.

38. Answering sub-paragraph 11 of paragraph V, interveners deny the same and further submit that the elimination therein referred to tends to promote monopolization and restraint of trade.

39. Answering sub-paragraphs 1 to 8 inclusive of paragraph VI, interveners deny that defendants Swift & Company could not possibly constitute a danger of monopolization in the distribution of foods and deny that said defendants are at a disadvantage in any legitimate enterprise because of the consent decree and submit that without the consent decree, defendants would continue as they have for more than thirty years restraining trade and with tendencies toward monopolization, and that said defendants are not satisfied with the parity of their competitors but seek preferences. It is admitted that a diversified line of products tends to give to food manufacturers, as it gives [fol. 330] to the defendants herein, greatly strengthened bargaining power with those with whom they deal. As to all the rest of the allegations in the said paragraph interveners being without information can neither admit nor deny same but demand strict proof thereof.

40. Answering sub-paragraphs 1 to 4 inclusive of paragraph VII, as to the contents of the Decree and its effect interveners make reference to the decree itself, and as to other statements in said paragraph the same are denied.

41. Answering sub-paragraphs 1 to 4 inclusive of paragraph VIII, interveners admit that packers by means of their branch houses and car routes reach all sections of the country and provide a wide outlet for distributing their products, but say that by reason of their branch houses and car routes defendants have a preference and advantage over merchants engaged in distributing the unrelated commodities in the decree, an advantage which was sought to be prevented by said decree. Further these interveners deny that anything in the consent decree improperly or illegally reacts against the packers and as to the rest of said paragraphs interveners being without information can niether admit nor deny same but demand strict proof thereof. Interveners admit there was a hearing as stated in paragraph 4 at which differences of opinion were expressed by different witnesses.

42. Answering sub-paragraph 1 to 5 inclusive of paragraph IX, interveners deny loss to the said defendants as alleged, deny that the decree is unnecessary or oppressive, deny that it would be to the advantage of the farmer or consumer to have said decree set aside and as to the rest of the allegations if the court should hold them material, interveners being without information can neither admit nor deny same but demand strict proof thereof. As to [fol. 331] the statements concerning the decree these interveners ask leave to refer to the decree for a correct statement of what it contains and what it means.

43. These interveners answering all of paragraph X say they admit that certain reports were had and reference thereto is made for an accurate and complete statement of what they contain. They admit that the Pakcers' and Stockyards' Act of 1921 has been before the courts and that such statute has been enforced by the Secretary of Agriculture and say that such act was passed with less regulatory content than would have been passed but for the consent decree, herein sought to be modified.

44. Answereng paragraph XI as to the construction of the decree therein, these interveners say they submit that the decree speaks for itself and reference is made thereto. As to the statement with reference to the trustees' reports interveners make reference to such reports for correct statements thereof. All other allegations in said paragraph are denied.

45. Answering paragraph XII, interveners make reference to the Packers' and Stockyards' Act of 1921 for a cor-ect and full statement thereof and say that such Act was less inclusive than it would have been except for the Consent Decree herein.

46. Answering paragraph XIII, interveners submit that the allegations in said paragraph are wholly immaterial but should the same be held to be material the construction of the decision therein referred to is for the court, and these interveners deny the construction stated by said defendants.

47. Answering sub-paragraphs 1, 3, 4, 5, and 6 of paragraph XIV, these interveners being without accurate information can neither admit nor deny same but demand

strict proof thereof and for special answer these Interveners say that the allegations of said defendants, especially the allegations of paragraph 6, show a healthy profit to the defendants far in excess of that received by the [fols. 332 & 333] average farmer, livestock grower, or merchant in the years named.

48. Answering sub-paragraph 2 of paragraph XIV, the same is denied.

49. Answering paragraph XV, these interveners say that the same is denied except insofar as specific admissions hereinbefore contained admit parts thereof, and specifically these interveners submit that defendants could not have suffered from the decree herein as they have not obeyed the same.

50. Referring to Exhibit "A" of said petition, these interveners say that a correct and full statement thereof is in the records of this court and they make reference thereto for an accurate statement thereof.

Wherefore interveners pray that the petition be dismissed at the cost of petitioners.

Edgar Watkins, Attorney for Interveners. Mac Asbill, of Watkins, Asbill & Watkins, Atlanta Trust Co. Bldg., Atlanta, Georgia, of Counsel.

Duly sworn to by R. H. Rowe. Jurat omitted in printing.

[fol. 334] In Supreme Court of the District of Columbia

[Title omitted]

Answer of American Wholesale Grocers' Association et al. of the Amended Petition to Modify of Armour & Company et al.—Filed July 3, 1930

Come now American Wholesale Grocers' Association, and the person, firms, and corporations joining in the intervention filed in this cause September 10, 1921 and without waiving their motion, general and special, to dismiss the petition of Armour & Company and those joining with it in its amended petition to modify but insisting on said motion

and contending that this court is without jurisdiction of said petition, and insisting that said petition shows no equitable reason for the relief prayed or any part thereof, and reiterating the special grounds of their motion directed to impertinencies in said petitions, respectfully say:

1. For convenience the interveners answering herein will be called Interveners, and Armour & Company and those joining with it in its petition to modify will be called the Armour defendants.

2. The Armour defendants herein should not be permitted to maintain this petition for that they are estopped under the facts in this case from so doing.

Said Armour defendants for good and valuable considerations voluntarily agreed to the decree of February 27, [fol. 335] 1920, entered in this court and have received such considerations, among others the following:

(a) Prior to the entry of said consent decree, and to the knowledge of the Armour defendants, the Federal Trade Commission and special counsel employed by the Department of Justice had, after hearings and study, concluded and reported that said defendants were in violation of the Anti-Trust laws of the United States; that the Attorney General of the United States then in office had by presenting witnesses to the Grand Jury in the United States District Court at Chicago, Ill., and in proposing the same course in New York, N. Y., sought and was seeking criminal indictments against said defendants; that said Attorney General was preparing to file suits in equity against said defendants to enjoin the continuation of said violations and to dissolve the said corporate defendants and to have appointed a receiver or receivers for all their assets used in such violations; and that because of the contract for a consent decree offered and made by said defendants, such criminal prosecutions and such equity suits were all discontinued on and after the contract for said consent decree was made, and now and when the petition of defendants was filed, rights of action, both criminal and civil, for the offenses then involved are and were barred by the statutes of limitation.

(b) Because as a result of the entry of said decree of February 27, 1920, said Armour defendants were enabled

to and did intervene in that certain proceeding then pending before the Interstate Commerce Commission entitled Southern Wholesale Grocers' Association vs. certain railroads therein named, and that certain other proceeding entitled National Wholesale Grocers' Association vs. certain railroads therein named and other persons therein named, [fol. 336] and did by intervention plead as an answer to the complaints therein and to the allegations that said Armour defendants enjoyed unlawful privileges in rates, rules and practices, that the said consent decree had terminated the competition between wholesale grocers and said Armour defendants, and that by reason of said decree complainants in said complaints before the Interstate Commerce Commission were not entitled to any relief, and because of such decree so pleaded by said Armour defendants substantial relief on said complaints was denied by the Interstate Commerce Commission to the advantage of said Armour defendants and said Commission in its report, reported in Vol. 62 I. C. C. Reports, at page 375 theerof, sustained in whole or in part said contentions of the Armour defendants.

(c) Because by reason of the entry of said consent decree the Congress of the United States refrained from passing more stringent regulatory laws than would otherwise have been passed and in the enactment of the Packers' and Stockyards' Act of 1921 gave force and effect to said consent decree by making said Act less inclusive than it otherwise would have been.

(d) That interveners here could have, prior to the entry of said consent decree, filed in their own name and behalf suits at law and equity to enforce against said Armour defendants their rights for special injuries caused by the violation by said defendants of the Anti-Trust laws aforesaid, all of which rights interveners abandoned because of the entry of said decree and such rights are now and were when the Petition to Modify herein was filed, barred by the statutes of limitation.

For each and all of the foregoing reasons said Armour defendants having knowingly obtained the advantages and considerations aforesaid, are estopped from prosecuting any efforts or proceedings, especially the efforts set up in [fol. 337] their amended petition, now before the court, to modify the consent decree.

(3) That said Armour defendants do not come into this court of equity with clean hands but have so conducted themselves as not to entitle them to any relief in a court of equity, said defendants being now and at all times since the entry of said decree of February 27, 1920 in violation thereof, and especially in the following particulars, to-wit: That said Armour defendants have continued to purchase the items referred to in paragraphs 4 and 5 of said consent decree and have not complied with the orders of this court in that they have by purchase and otherwise put themselves in a position where it will be more difficult for them to comply with the decree if and when the provisional modification now in force is terminated; that said Armour defendants in pursuance of their unlawful practices have continued to demand and receive from the carriers, especially the carriers in western trunk line territory preference in the rates, rules, and practices of such carriers and are now receiving rate adjustments from such carriers that are unreasonable and unjust and, as interveners are informed and believe, are in violation of the law in that in conflict with the applicable tariffs they are receiving rates on packer or peddler cars on shipments of less than the minimum weight required in such tariffs; that said Armour defendants are further openly and contemptuously in violation of the decree herein and the Anti-Trust Laws of the United States in that as interveners are informed and believe they are through a corporation know as the Waugh Equipment Company owned by said defendants or at least controlled by them, exerting the influence of a large shipper by seeking to coerce and compel carriers to purchase the products of said Company, thereby carrying out their continuing plan of obtaining for themselves special privileges and advantages. For each and all [fol. 338] of said reasons said Armour & Company, defendants, are not entitled to maintain this suit and relief should be denied them.

4. In the amended petitions herein of said Armour defendants there is such an intermixture of prophesy, opinions and conclusions with a small proportion of facts that an answer thereto is difficult and these interveners deny each and every of the allegations of fact, conclusions, opin-

ions, and prophesy contained in said petitions, unless hereinafter specifically admitted.

5. Referring in detail to the amended petitions of said Armour defendants and to the preliminary paragraphs thereof in which it is alleged that there have been radical and revolutionary changes since the entrance of the consent decree in economic conditions, merchandising methods, etc., these interveners deny the same as alleged and say that such changes, if any there be, have been a natural and orderly economic development differing if at all only in degree from changes prior to 1920, and in no way do such changes, if any, affect the question involved in the bill of complaint of the United States herein on which said consent decree was entered.

6. Referring in detail to paragraphs 1 to 4 inclusive of the amended petitions of said Armour defendants, interveners refer to the record herein for a correct statement of the original petition and the decree.

7. Answering paragraphs 5 interveners admit that the purpose of the Sherman Anti-Trust Act is as stated, but they deny that the consent decree will have the effect of restraining commerce or competition and as to the other allegations therein they refer to the consent decree itself for a correct statement of what it contains.

8. Answering paragraph 6 interveners deny the same and say that such changes, if any there be, have been a natural and orderly economic development and in no way affect the [fol. 339] question involved in the complaint of the United States herein on which said consent decree was entered, and they deny that the entry of these defendants into the unrelated lines will increase competition or prevent dominant control by others, and they deny that the restrictions imposed by these defendants by the consent decree are prejudicial to livestock producers or the consuming public, and say that insofar as said decree imposes restraint upon the said Armour defendants it is fair, just, legal, and consented to by said defendants.

9. Answering paragraphs 7 and 8 interveners submit that the allegations in said paragraphs contained are wholly immaterial but should the same be held to be material the

construction of the decision therein referred to is for the court, and these interveners do not agree with the construction stated by said defendants.

10. Answering paragraphs 9, 10, and 11, these interveners make reference to the Packers' Stockyards' Act of 1921 for a correct and full statement thereof and say that such Act was less inclusive than it would have been except for the consent decree herein.

11. Answering paragraph 12, interveners admit that the Packers' Stockyards' Act of 1921 has been considered by the courts and that it has been enforced by the Secretary of Agriculture and say that such act was passed with less regulatory content than would have been the situation but for said consent decree.

12. Answering paragraph 13 interveners submit that the same is impertinent and wholly immaterial.

13. Answering paragraphs 14 and 15, interveners say that the allegations contained therein are immaterial to any issue in this cause, but should the same be held to be material by the court these interveners say that the losses su- [fol. 340] stained by the defendants herein since the entry of the said consent decree are in no way due to the operation of said decree, but to other causes set forth in paragraph 17 of the petition of said Armour defendants; as to whether or not there have been losses interveners for lack of information can neither admit nor deny but demand strict proof.

14. Answering paragraph 16 to 19, inclusive, interveners say that the same are immaterial to any issue herein but should the same be held to be material in any way, interveners being without information can neither admit nor deny the same but demand strict proof thereof. As to the hearings before the Secretary of Agriculture they refer to the record in that proceeding for a correct statement of what it contains, and further they say that insofar as such proceedings indicated competition between said Armour defendants and other meat packing establishments it is a healthy condition which the said consent decree was intended to preserve.

15. Answering paragraphs 20 to 22 inclusive, these interveners admit that certain reports were filed and reference

is made thereto for an accurate and complete statement of what they contain.

16. Answering paragraphs 23 to 25, inclusive, interveners say that the same are immaterial to any issue in this cause, but if same should be held material these interveners being without information can neither admit nor deny the same but demand strict proof thereof.

17. Answering paragraph 26, interveners refer to the record herein for a correct statement of what defendants were discharged from the effect of the said consent decree.

18. Answering paragraph 27 interveners say that if the court holds that said paragraph is material that reference is made for answer to the record in this cause showing their [fol. 341] intervention and the decrees, opinions, and orders of this court in relation thereto.

19. Answering paragraph 28, interveners deny the same insofar as said paragraph alleges that said Armour defendants have no unfair advantage and say that the proceedings referred to in said paragraph and the evidence therein show unfair preference and advantage conceded by interstate carriers to said defendants and that the decision of the Interstate Commerce Commission was rendered as alleged, solely because of the fact, as these interveners are informed and believe and believing so allege, that prior thereto this court had entered the consent decree herein.

20. Answering paragraph 29, interveners deny that they will not be subjected to unfair and illegal prejudice if said consent decree is modified as prayed, and deny that they oppose modification of said consent decree to avoid any legitimate competition in the wholesale grocery business. They do admit there are a large number of wholesale grocers, perhaps not 6,000, but that such wholesale grocers act independently and are customers of the Armour defendants. As to all other allegations being without information interveners can neither admit nor deny the same but demand strict proof thereof.

21. Answering paragraphs 30 and 31, interveners say that they are without accurate information and therefore can neither admit nor deny the same but demand strict proof thereof.

22. Answering paragraph 32, interveners say that as to the allegations of fact therein they are without information and therefore can neither admit nor deny the same but demand strict proof thereof, and as to the conclusion drawn in the last seven lines thereof interveners deny the same and say that such conclusion does not follow.

23. Answering paragraph 33, interveners submit the [fol. 342] same is immaterial to any issue herein, but if the same should be held material they say that if there is competition in the sale of meats as alleged it is a healthy condition which the said consent decree is intended to preserve and as to the alleged advantage of small packers interveners deny the same.

24. Answering paragraph 34, insofar as the same refers to testimony before the Secretary of Agriculture interveners refer to the record in that proceeding for a correct statement of what it contains, and as to the conclusions drawn from that record by the Armour defendants interveners can neither admit nor deny the same but demand strict proof thereof.

25. Answering paragraph 35, in which it is alleged that there have been radical and revolutionary changes in economic conditions, merchandising methods, etc., since the entry of the consent decree, interveners deny the same and say that such developments were well known before 1920 and that they have not become a general condition since 1920, and for further answer interveners say that the said Armour defendants have participated in such developments both before and since 1920 to a greater degree than is general among food manufacturers.

26. Answering paragraph 36, interveners say that the same is irrelevant to any issue herein but should the same be held to be relevant in any way, it presents but a question of opinion as to which interveners are without information and can, therefore, neither admit nor deny same but demand strict proof thereof should it be held that said paragraph is material.

27. Answering paragraphs 37 and 38, interveners submit that the same are immaterial to any issue herein but should the same be held material, they are without informa-

tion and therefore can neither admit nor deny the same but demand strict proof thereof.

[fol. 343] 28. Answering paragraph 39, interveners say that as to the allegations of trends and prophesies they are without information and therefore can neither admit nor deny the same but demand strict proof thereof, and as to the allegations that the said Armour defendants have been injured by the said consent decree they deny the same and say that defendants could not have suffered from the decree herein because they have never fully obeyed the same.

29. Answering paragraph 40 to 43, inclusive, interveners say that for lack of information they can neither admit nor deny the specific allegations contained therein but demand strict proof thereof. They do admit that there has been some growth since 1920 in the extent of business in the chain store and say that such growth was reasonably within the contemplation of said Armour defendants at the time they agreed to the decree of February 27, 1920, and that there is nothing in such growth justifying a change in the decree as here sought.

30. Answering paragraph 44, interveners being without information can neither admit nor deny the same, except as to the last seven lines thereof and as to which they deny the same.

31. Answering paragraphs 45 to 47, inclusive, interveners submit that insofar as same is claimed as a basis for affirmative relief it is immaterial to any issue in this cause but it does show, as interveners submit, an intention on the part of said Armour defendants themselves to participate further in the trend toward concentrated control of food manufacturing.

32. Answering paragraph 48, interveners deny that in 1920 the chain grocery stores sold practically no meats and deny that there is the serious danger claimed in the latter part of the paragraph.

33. Answering paragraph 49, interveners say that for lack of information they can neither admit nor deny the [fol. 344] allegations contained therein but demand strict proof thereof.

34. Answering paragraph 50, these interveners submit that if such allegations are true they show no reason for modification of the consent decree herein but merely a change in degree, and as to such allegations these interveners being without accurate information can neither admit nor deny the same but demand strict proof thereof.

35. Answering paragraphs 51 to 53, inclusive, interveners say that for lack of information they can neither admit nor deny the same but demand strict proof thereof.

36. Answering paragraphs 54 and 55, as to the allegations relating to the business and profits of the named Companies therein, interveners being without information can neither admit nor deny the same but demand strict proof thereof, and specifically interveners deny that said named businesses are conducted on a more profitable basis than Armour defendants and say there is no legal propriety in comparing the two classes of business.

37. Answering paragraph 56, interveners submit that the allegation therein is immaterial to any issue in this cause, and as to the conclusions drawn, they are denied.

38. Answering paragraph 57, interveners deny the first six lines thereof and as to the rest of said paragraph interveners being without information can neither admit nor deny the same. They do admit there are a large number of wholesale grocers, but say that such wholesale grocers act independently and are customers of the Armour defendants.

39. Answering paragraph 58, interveners say that they are without information as to the allegations therein and therefore can neither admit nor deny the same but demand strict proof thereof, and specifically these interveners say that the elimination therein referred to tends to promote monopolization and restraint of trade.

[fol. 345] 40. Answering paragraph 59, interveners deny that most of the grocers merchandise grocery products under their own private labels and brands, admit that some grocers do, but say that this condition existed at and before February 27, 1920, and interveners submit that the use of brands would not in anywise prevent monopolization or restraint of trade and say that said Armour defendants use and have used for years special brands.

41. Answering paragraph 60, interveners deny that Armour defendants have no preference in transportation through the use of their refrigerator cars, and as to the rest of the allegations therein the interveners for lack of information can neither admit nor deny the same but demand strict proof thereof.

42. Answering paragraph 61, interveners deny that their intervention in this cause to protect the said consent decree is inequitable, and as to the other allegations and prophesies therein these interveners being unable to look into the future can neither admit nor deny the same and demand strict proof thereof.

43. Answering paragraph 62, interveners admit that packers by means of their branch houses and car routes reach all sections of the country and provide a wide outlet, but say that by reason of their branch houses and car routes they have a preference and advantage over merchants engaged in distributing the unrelated commodities in the decree, as aforesaid, an advantage which was sought to be prevented by said decree. As to the other allegations therein interveners being without knowledge can neither admit nor deny the same but demand strict proof thereof.

44. Answering paragraph 63, interveners admit there was a hearing as stated at which differences of opinion [fol. 346] were expressed by different witnesses and refer to the report for an accurate statement of what occurred.

45. Answering paragraph 64, interveners say that the same is immaterial to any issue in this cause, but if it should be held material they are without knowledge, and can therefore neither admit nor deny the same and demand strict proof thereof.

46. Answering paragraph 65, interveners deny that the handling of unrelated commodities by the Armour defendants would be in the interest of the public or would promote competition or a reduction in price, and as to the effect of such business upon the costs of the said defendants interveners are without knowledge and can, therefore, neither admit nor deny the same but demand strict proof thereof.

47. Answering paragraph 66, interveners say that they are without information and can neither admit nor deny the

same but demand strict proof thereof. They admit that they do vigorously oppose modification of the said consent decree because interveners submit that a modification would be unauthorized, destructive of competition, and injurious to the public.

48. Answering paragraphs 67 to 70, inclusive, interveners deny that the chain store systems work a special handicap on the Armour defendants and specifically say that if said defendants permit themselves to sell goods to the chain stores at a less price than they sell to others that said defendants are themselves guilty of violating the Clayton Act and the consent decree. For further answer interveners deny that the alleged loss of business by the Armour defendants has been due to the operation of the said consent decree, and they submit that such allegations are irrelevant to any issue in this cause, but if they should be held relevant by the court, interveners for lack of information can neither admit nor deny the same but demand strict proof thereof.

[fol. 347] 49. Answering paragraph 71, as to the prophesy therein contained of the merger of meat packers with grocery chains, interveners being unable to look into the future cannot admit or deny the same, but on information and belief believe and so allege, that said Armour defendants do contemplate mergers with chain stores, such belief being based upon the statement of brokers in Chicago, published in the Congressional Record of May 22, 1930, Volume 72, No. 128, page 9712.

50. Answering paragraph 72, interveners say that the conclusions expressed therein do not follow from any allegations therein or in any other paragraph of the petition, and are wholly irrelevant to any issue in this cause.

51. Answering paragraph 73, interveners for lack of information can neither admit nor deny the same and demand strict proof thereof.

52. Answering paragraph 74 interveners submit the construction thereof to the court and insofar as said paragraph contains allegations other than construction of the decree interveners submit that same is an expression of an opinion or prophesy and say they are without accurate in-

formation and can neither admit nor deny the same but demand strict proof thereof.

53. Answering paragraph 75, interveners deny that Armour defendants could not possibly constitute a danger of monopolization in the distribution of foods and deny that said defendants are at a disadvantage in any legitimate enterprise because of the Consent Decree and say that without the consent decree defendants would continue as they have for more than thirty years in restraint of trade and in tendencies toward monopolization and that said defendants are not satisfied with a parity with their competitors but seek preferences. Further answering said paragraph interveners deny that said defendants will be [fol. 348] injured as alleged therein and say that the decree is not unfair and unjust, but is just, fair, legal and consented to by said defendants.

54. Answering paragraph 76 interveners deny the same. For further and general answer to this and all other paragraphs of the petition of the Armour defendants interveners refer to and make part hereof their answer to the Swift defendants filed herewith.

Wherefore interveners pray that the petition be dismissed at the cost of the petitioners.

Edgar Watkins, Attorney for Interveners. Mac Asbill, of Watkins, Asbill & Watkins, Atlanta Trust Co. Bldg., Atlanta, Georgia, of Counsel.

Duly sworn to by R. H. Rowe. Jurat omitted in printing.

[fol. 349] IN SUPREME COURT OF DISTRICT OF COLUMBIA

ANSWER OF INTERVENER NATIONAL WHOLESALE GROCERS' ASSOCIATION OF THE UNITED STATES TO AMEND PETITION OF SWIFT & COMPANY ET AL.

Comes now National Wholesale Grocers' Association of the United States and for answer to the Amended Petition of Swift & Company, et al., on file herein, says:

1. For answer to the allegations contained in paragraphs 1 to 12, inclusive, of Part I of said amended petition, this

intervener admits that since the year 1920 certain trends in the direction of integration, mass selling, diversification and development of brands have become considerably extended, but as to what, if to any extent, such brands have resulted in reducing costs to ultimate consumers this intervener is without knowledge; that as to whether such trends are economically beneficial or otherwise from the standpoint of the public welfare is a matter highly controversial and concerning which there are widely differing opinions; that said trends had a definite and well-defined existence at the time said consent decree was entered and the same were then within the knowledge and contemplation of the parties to said decree; denies that the said decree in purpose or effect prevents petitioners from bringing about lower costs of distribution or from improving its [fol. 350] service to its customers; denies that said decree unnecessarily restrains petitioners, or that it is oppressive, injurious, lessens competition or is against the public interest, but avers, on the contrary, that said decree has had the effect of stimulating trade and commerce in the sale of commodities not directly related to the packing industry by enabling numerous individuals and concerns to engage in the business of manufacturing and selling said commodities to an extent and on a scale which would have been impossible if the packer defendants named in said decree had not been placed under the restraints and injunctions thereof.

2. For answer to the allegations contained in paragraphs 1 to 12, of Part II of said amended petition, this intervener says that as to the statistical and financial data contained therein this intervener is without knowledge and therefore denies same; this intervener denies that in 1920 the chain grocery stores were a relatively small factor in the distribution of food products and denies that the number or strength of chain store organizations shows that the defendants named in the decree would not or could not become a food monopoly if permitted to deal in commodities prohibited by the decree or if permitted to conduct retail meat markets; denies that said consent decree is unnecessary, unjust or oppressive to petitioners or against the public interest.

For further answer to the allegations contained in said Part II of said amended petition this intervener says that

the petitioner, Swift & Company, was at the time said decree was entered, and still is, a dominant factor in the meat packing industry; that said industry as a whole ranks first among American manufacturing enterprises; that the gross value of the products produced by this industry is in excess of $3,000,000,000 per annum; that said products are of vital importance to the health and welfare of the consuming public; that by reason of the favorable position in the packing [fol. 351] industry held by said petitioners their products are, and will continue to be, in such demand as to enable them to compete successfully for markets without being permitted to obtain similar leadership in the manufacture, processing and handling of other necessaries of life; that if said packers are permitted without restriction to manufacture and distribute food products generally, including meats, it is only a question of time until they can, if they are so disposed, become a greater menace to the public welfare than they were at the time said decree was entered.

For further answer to the allegations contained in paragraph 10 of said Part II, this intervener admits that the practice of buying branded products by chain stores, including the brands of these petitioners, if the sole purpose thereof is to enable them to sell at low prices, is a commendable practice, but intervener says that said practice, if lawfully conducted, does not operate to the disadvantage of petitioners to any greater extent than it does to the manufacturers of branded products in general; on the contrary, the petitioners' brands are so well known and so well established in domestic and foreign markets and constitute such a large part of the total production of meat and meat products that they are in an advantageous position in dealing with said chain stores as well as in dealing with all other purchasers of their commodities; that as to the allegation in said paragraph 10 to the effect that the handling of petitioners' brands by chain stores has resulted in restricting petitioners' market among independent retailers, and in forcing petitioners to move their perishable products at drastic price concessions, this intervener is without knowledge and therefore denies same.

For further answer to paragraph 11 of said Part II of said amended petition, this intervener denies that petitioners are forced to sell their products at a loss or at unreasonably low prices as the result of the buying power of

[fol. 352] chain stores; and denies that the bargaining power of petitioners is unreasonably restricted by the provisions of said consent decree.

For further answer to the allegations contained in paragraph 12 of said Part II, particularly the allegation that petitioners have been compelled to seek out and cultivate small, individual retailers of meat, thereby adding to the number of small orders, this intervener is without knowledge; this intervener denies that the reduction in the size of the orders is common to petitioners but avers that the practice and trend is common to all wholesale and retail merchandising outlets; and further avers that the said decline in size of orders is the reflection of a decrease in production of live stock, as well as a decrease in consumption of meat products, as reported by the United States Department of Agriculture, and has no relation to the operation of the said decree or its effect upon customers of competitors of said petitioners; that said interveners are likewise without knowledge with regard to each and every allegation contained in said paragraph, and therefore deny same.

3. For answer to the allegations contained in paragraphs 1 to 4, inclusive, of Part III of said amended petition, this intervener admits that petitioners are engaged in the business of manufacturing and dealing in meats, meat products, livestock products, butter, cheese, eggs and poultry; admits that grocery chain stores are also engaged to some extent in the same fields of industry, but as to the extent to which they have become so engaged by establishing packing plants, sausage-making plants, dairies, refrigerated meat warehouses, meat cutting plants, cheese factories or creameries, this intervener is without knowledge; intervener denies that said consent decree is unfair in fact, or that it appears to be so for the reason that grocery chains are entering the meat packing and produce business while petitioners are prohibited from entering the grocery busi- [fol. 353] ness or selling meats and produce at retail; that as to whether, as alleged in said paragraph 2, the entry of chain stores into the business of performing the collecting and wholesaling functions in butter and eggs for their stores has injured petitioners, or has resulted in leaving a surplus of collecting and wholesaling facilities on peti-

tioners' hands with resulting difficulties of operation and losses, or has reduced the number of available retail outlets to petitioners, this intervener is without knowledge; denies that the prohibitions of said consent decree against the establishment of retail stores by petitioners are unfair.

That as to the allegations contained in said paragraph 3, that said chain stores are entering various other manufacturing fields, this intervener is without knowledge and therefore denies same.

That as to the allegations contained in said paragraph 4, to the effect that the absorption of the manufacturing and wholesaling functions by chain stores has in certain instances caused loss and embarrassment to some manufacturers, or has forced others to establish their own retail outlets, or that the entry of the grocery chains into the business of retailing meats has already injured petitioners, this intervener is without knowledge; that the other allegations contained in said paragraph 4 are argumentative, irrelevant and tender no issuable facts.

4. For answer to the allegations contained in paragraphs 1 to 3, inclusive, of Part IV of said amended petition this intervener says that as to the allegations contained in said paragraph 1, to the effect that certain meat packer competitors of petitioners, who are not subject to said consent decree, are selling meats at retail, and as to the number and names of the concerns which are alleged to be so engaged, it is without knowledge.

That as to the allegations contained in said paragraph 2 that there is a possibility that more of the non-defendant meat packers will merge with grocery chains and that two instances of such mergers have already occurred, and [fol. 354] that such possible mergers would seriously injure the business of petitioners unless said consent decree is modified, as prayed for by petitioners, this intervener is without knowledge. This intervener denies that said consent decree is unfair or unjust to petitioners in that it prohibits them from establishing retail outlets, or for any other reason.

That as to the allegations contained in said paragraph 3 that non-defendant meat packers have their own branch houses and operate refrigerator cars and that they handle diversified lines of groceries and other food products, this

intervener is without knowledge. This intervener denies that said consent decree is unjust or unfair or that it substantially lessens competition or that it is against the public interest.

5. Answering the allegations contained in paragraphs 1 to 11, inclusive, of Part V of said amended petition, this intervener admits that there are approximately 6,000 wholesale grocers located in approximately 2,300 cities throughout the United States, and that they do a large volume of business; denies that the nature of the wholesale grocery business is such that it cannot be monopolized by a small number of concerns, particularly in certain lines such as the handling of food products; denies that if petitioners were permitted to engage in selling groceries at wholesale they could not, even if they desired to do so, monopolize the manufacture and distribution of food products; denies that they could not restrain trade or competition therein or constitute a danger or threat of monopoly if permitted to engage in selling groceries at wholesale.

That as to the allegations contained in said paragraph 2 as to the extent to which voluntary chains or associations have been formed by wholesale grocers, this intervener is without knowledge; that as to what will take place in the future in this direction is a matter of pure speculation. This intervener denies that if petitioners are permitted to [fol. 355] sell groceries at wholesale they could not create a monopoly or constitute a danger or threat of monopoly in the manufacture and distribution of food products.

This intervener denies the allegation contained in said paragraph 3 that the operation of chains of retail grocery stores by wholesale grocers "is a shining example" of the unfairness of the decree; denies that intervener selfishly opposes the modification of said consent decree; denies that said decree creates a special privilege for wholesale grocers or grocery chains to the injury of petitioners or otherwise; and denies that said consent decree violates the spirit of the anti-trust laws or that it reduces competition or is against the public interest.

That as to the allegations contained in paragraph 4, that since the entry of the decree many wholesale grocers have begun and are now handling packing house products, that these products are sold in retail chains of wholesale gro-

cers and other allegations of a similar nature, this intervener is without knowledge and therefore denies same. This intervener further denies that the decree is unfair and unjust to the defendants herein; that any special privilege is created for wholesale grocers in any field and that it is against public interest as declared by the anti-trust laws.

That as to the allegations contained in said paragraph 5 this intervener denies that in order to keep pace with the modern trend toward chain retail food stores a food manufacturer and wholesaler must handle other lines of commodities; that as to whether, and as to what extent, canned goods and other groceries can be handled efficiently with meats this intervener is without knowledge. In this connection this intervener says that whatever efficiency exists at the present time in the combined handling of said products existed to an equal extent at the time said consent decree was entered, and that such efficiency constitutes no test as to the violation of the anti-trust laws; the same [fol. 356] statement is true of similar allegations contained in said paragraph 6 of the amended petition.

For further answer to the allegations contained in said paragraph 6 this intervener denies that it is to the interest of the livestock producers or the meat industry of the country or the consumers of meats that petitioners be permitted to distribute groceries; denies that the exclusion of petitioners from the grocery business serves any selfish interest of the wholesale grocers or is damaging to livestock producers and consumers, or is unnecessary or unfair or lessens competition or is against the public interest.

For answer to the allegations contained in said paragraph 7 this intervener says that it has no accurate information as to the extent to which petitioners are engaged in transporting and distributing grocery products, but says that to whatever extent petitioners are so engaged they are violating the provisions of said consent decree; admits that in the year 1921 the Interstate Commerce Commission decided that the defendants named in said decree had no unfair advantage over wholesale grocers in field of railroad transportation by reason of their refrigerator cars, but in this connection this intervener says that said decision of the Interstate Commerce Commission was rendered after said consent decree was entered, and one of the reasons

why the Interstate Commerce Commission refused to grant the full relief demanded in the proceedings was that the packers brought to the attention of the Commission the entry of the consent decree, represented that they were carrying out the terms of said decree in good faith, and asserted that the entry of said decree eliminated the competition to which the grocers objected and would bring about a result more favorable to the complainants than any obtainable by an order in that proceeding (61 I. C. C. Rep. 375; June 22, 1921). This intervener denies that by [fol. 357] reason of the increased use of motor driven vehicles the petitioners would have no advantage over the grocers with respect to transportation facilities if the petitioners were permitted to engage in the manufacture and distribution of the unrelated lines mentioned in said decree.

For answer to the allegations contained in paragraph 8 this intervener admits that certain of the wholesale grocers of the United States are the owners of various extensively advertised and well known brands and trade names, and that they merchandise certain grocery products thereunder; admits that trade marks and brands of individual wholesale grocers, which in fact are their own trade names of brands, cannot lawfully be monopolized by others, but the products so sold under particular trade marks or brands may lawfully be, and are, sold by others and are susceptible of constituting an integral part of a monopoly in the handling of food products; denies that there is no possibility of a monopolization of grocery products on the part of the petitioners and other defendants named in said consent decree, unless the prohibitions of said decree are continued in full force and effect.

For answer to the allegations contained in said paragraph 9 this intervenor admits that certain retail chain stores perform wholesale functions; denies that by reason thereof the petitioners and other defendants named in said decree could not continue or make a monopoly effective; on the contrary, this intervener says that petitioners have given and can give no adequate assurance that if relieved from the restraints of said decree they will not proceed to the establishment of still greater dominance in the food industries than existed at the time said consent decree was

entered; petitioners have not given and cannot give any adequate assurance that if the provisions of said consent decree are modified, as prayed by them, they will not immediately proceed to form mergers and combinations and engage in conspiracies more powerful and inimical to the public welfare than existed when said consent decree was entered.

[fol. 358] For answer to the allegations contained in said paragraph 10 this intervener says that as to whether or not the removal of the restrictions contained in said consent decree, with respect to retail markets, will be ineffective for the purposes the petitioners have in mind, unless corresponding modification of paragraphs 3, 4 and 5 of said decree, with respect to grocery products and other commodities, is also made, this intervener is without knowledge and, therefore, denies said allegation; denies that competitive conditions and the modern trend of merchandising are such that only combination food stores selling meats in combination with groceries can be successfully established.

For answer to the allegations contained in said paragraph 11 this intervener denies that the disadvantages or difficulties suffered by the wholesale grocers of the country have not been caused by petitioners and the other defendants named in said decree, and denies that said wholesale grocers would have suffered such disadvantages and difficulties if the petitioners' right to deal in such articles had not been prohibited by said decree; denies that such disadvantages and difficulties have not been due to the activities of the packers and denies that the reasons therefor are found in the alleged movement among wholesale grocers to do their own manufacturing, to establish their own private brands or to operate retail stores; denies that on account of any of the facts stated in said paragraph said consent decree is unfair to petitioners or wrongfully excludes them from fields of business in which they could engage with benefit to the public, and denies that such exclusion is against the public interest.

6. For answer to the allegations contained in paragraphs 1 to 8, inclusive, of Part VI of said amended petition, this intervener admits that petitioners are forbidden by said consent decree from engaging in certain activities, and that since the entry of said decree other food manufacturers

[fol. 359] have diversified their activities in this direction, but in this connection this intervener says that all of the so-called trends in the manufacture and distribution of foods and other commodities were in operation at the time said consent decree was entered; that the inferences drawn from the facts alleged in said paragraphs are speculative, insusceptible of verification, and are not correctly drawn; that even if such facts had existed at the time said consent decree was entered, to the same extent as at the present time, they would not have constituted any defense to the bill of complaint filed in this cause. That as to whether the concerns mentioned in said paragraphs 2 and 3 are examples of trends which have developed since said decree was entered and as to whether the General Foods Corporation produces and distributes the products mentioned in said paragraph 3, this intervener is without knowledge; that as to whether Standard Brands, Inc., comprises the several concerns mentioned in said paragraph 4, or have made available to retail dealers the marketing facilities mentioned therein, this intervener is without knowledge; with respect to the allegations contained in said paragraph 5 that by the processes mentioned therein prices to consumers are lower, this intervener says that all of said allegations are the expression of theories and opinions with regard to complex economic facts, and to the extent that such allegations are true they present situations no different than those that existed at the time said consent decree was entered; that said allegations merely constitute an argumentative attack on the policy of the anti-trust laws of the United States. The same is true of the allegations contained in said paragraphs 6, 7 and 8, and for further answer to the allegations contained in said paragraphs this intervener denies that petitioners are prohibited from contributing to the reduction of the cost of distributive food products; denies that said consent decree is inequitable [fol. 360] or that it lessens competition or that it is against public interest; denies that the defendants named in said decree could not constitute a danger or monopoly or domination in the distribution of foods if released from the prohibitions of said decree.

7. For answer to the allegations contained in paragraphs 1 to 4, inclusive, of Part VII of said amended petition, this

intervener denies that the said consent decree is inequitable or that it is detrimental to the public, or that it prevents the defendants named therein from distributing their products at reasonable cost, or that it stultifies any alleged attempt on the part of petitioners and the other defendants named in said decree to cheapen their methods of distributing meats; that as to whether the defendants named in said decree have suffered losses as the result of the provisions of said decree this intervener is without knowledge; this intervener denies that said consent decree contains the power to destroy the defendants named therein, and denies that the results of said decree were not contemplated by the consenting parties thereto at the time said decree was entered.

8. For answer to the allegations contained in paragraphs 1 to 5, inclusive, of Part VIII of said amended petition, this intervener admits that farmers and livestock producers of the United States are an important part of the public; admits that agriculture is a fundamental industry of the nation; denies that the wholesale grocers are a small and relatively unimportant part of the public, or that their functions are becoming uneconomical or obsolete; admits that the prosperity of the farmers and the livestock producers is a matter of public concern; admits that the large packers by means of their various facilities perform useful functions in the distribution of livestock products, but denies that it is to the interest of the livestock producers to have the use of any of the marketing facilities prohibited by the decree; denies that the large packers [fol. 361] are crippled by the decree or that the restrictions thereof are artificial or unreasonable.

That as to the allegations contained in said paragraph 3 to the effect that the farmers and livestock producers of the nation are in favor of the modification of the decree, and as to the allegation that certain livestock producers and farmers associations are urging the modification of said decree and have passed resolutions to that effect, this intervener says that it is without knowledge and therefore denies same; this intervener alleges upon information and belief that the resolutions adopted by the Associations, referred to in said paragraphs, were instigated and prepared in whole or in part by these petitioners and that said Associations do not favor any modification

of the decree directly affecting them or their members; this intervener denies that the modification of the decree as prayed would be in the interest of farmers and livestock producers or would be in the public interest; admits that in 1929 at the request of the Attorney General the Secretary of Agriculture of the United States held hearings on the subject of the modification of said consent decree; admits that numerous witnesses appeared at said hearing, but as to whether, or to what extent, said witnesses urged the modification of said consent decree as a measure for their welfare or the welfare of the public, this intervener is without knowledge; denies that public opinion in general is in favor of the modification of said decree, but on the contrary your intervener alleges that the general public favors the further continuance and maintenance of the decree and its strict enforcement, and opposes any modification thereof.

9. For answer to the allegations contained in paragraphs 1 to 5 of Part IX of said amended petition, this intervener says that as to whether the defendants named in said decree or any of them have been forced out of the business of handling milk and cream, or of manufacturing and handling butter and cheese in any of the territories mentioned [fol. 362] in said paragraph 1, this intervener is without knowledge; denies that said decree is unfair or oppressive on account of any of its provisions with regard to the handling by the defendants named in said decree of milk or cream or the manufactured products thereof; that as to whether or not the petitioners have suffered or will suffer loss or damage in the handling of said products or the manufacture thereof unless the prohibitions of said decree with respect to fresh milk and cream are modified, this intervener is without knowledge; admits that petitioners are prohibited by the decree from dealing in many poultry and animal feeds, but as to whether or not the petitioners have suffered loss or damage to their business on account of such prohibitions this intervener is without knowledge; denies that it would be to the advantage of the farmer or the consumer if petitioners could deal in fresh milk and cream; denies that the removal of the prohibitions against doing so would furnish a more highly competitive market for poultry, eggs, milk and cream; and denies that said decree is unnecessary or op-

pressive to petitioners or detrimental to farmers or consumers, or that it is against the public interest.

10. For answer to the allegations contained in paragraphs 1 to 3, inclusive, of Part X of said amended petition, this intervener says that as to whether the facilities and services rendered by petitioners and the other defendants named in said decree, or the prices of livestock marketed therein, are as good as the facilities, services or prices at stockyards owned or furnished by non-packer owned stockyards, this intervener is without knowledge; that as to whether packer ownership of said stockyards has no effect upon the prices of livestock sold in such yards, or as to whether the competition therein is as full, free and vigorous as in non-packer owned stockyards, this intervener is without knowledge; that as to whether com- [fol. 363] mission men doing business at packer owned stockyards are not discriminated against as to office space, location of pens or otherwise, this intervener is without knowledge; that as to whether buyers of livestock are shippers and sellers of livestock, stockyards banks, cattle loan companies or other persons doing business at packer owned yards are not dominated against, this intervener is without knowledge; this intervener admits that the trustees appointed by this court of the stock of the Swift and Armour interests in stockyards held certain hearings for the purpose of ascertaining conditions at such yards, but denies that such hearings were exhaustive; admits that after said hearings were completed said trustees reported to this court that they found no violations of law in the operation of said stockyards; denies that such investigation and report shows, or has any tendency to show, that the prohibitions of said consent decree with regard to the ownership of stockyards by the defendants named in said decree are unnecessary, or that the ownership of such stockyards does not constitute an illegal advantage, or that the same could not be used as a means of restraining trade or commerce in the purchase of livestock or the manufacture or sale of meats and livestock products; denies that said report shows, or has any tendency to show, that the prohibitions of said decree against ownership of stockyards by petitioners and the other defendants named therein are unnecessary or that said stockyards cannot be used as a means of restraining trade or commerce in the

purchase of livestock or the manufacture and sale of meats and livestock products, or that there is no danger that mononopoly or restraint of trade will result from said ownership in the future.

For further answer to the allegations contained in said paragraphs 1 and 2 this intervener admits that the conditions in said packer owned stockyards have improved since said consent decree was entered, but in this connection [fol. 364] this intervener says that such improvement is entirely due to the restrictions and other provisions of said decree; and said petitioners have given and can give no adequate assurance that the conditions which prevailed at the time said consent decree was entered, with regard to the operation of packer owned stockyards, would not be restored if said decree were modified as prayed for by them.

This intervener admits that since the entry of said decree the "Packers and Stockyards Act of 1921" has been passed by the Congress of the United States, and that certain of the provisions of said act are substantially as set forth in said paragraph 3; in this connection this intervener says that the prohibitory provisions of said Packers and Stockyards Act are, in the main, merely declaratory in character and said act as a whole provides for regulation by the Secretary of Agriculture of only a part of the activities and practices enjoined by said decree; that said Packers and Stockyards Act was enacted by Congress with full knowledge of the provisions of said consent decree and was intended to supplement but not to supersede the same; that the purpose of Congress in enacting said act was to place the packers under the constant surveillance of the Secretary of Agriculture to insure obedience to the consent decree as well as to prevent the packers from indulging in unlawful practices other than those mentioned in the decree. Your intervener further alleges that said Packers and Stockyards Act applies only to the manufacture and distribution of meat products and would not apply to transactions and dealings of these petitioners and the other defendants named in said decree in unrelated lines if permitted to engage therein. Upon information and belief this intervener says that substantial changes and amendments of said Packers and Stockyards Act were obtained by petitioners and the other defendants named

in said decree on the plea that such changes and amend-
[fol. 365] ments were proper in view of the content of said decree.

This intervener denies that the regulation by the Secretary of Agriculture under said act is complete, adequate or effective except for the purposes of supplementing the provisions of said consent decree; denies that the provisions of said act render the consent decree inappropriate, unnecessary or unjust.

11. For answer to the allegations contained in paragraph 1 of Part XI of said amended petition, this intervener admits that paragraph 2 of said consent decree enjoins petitioners from owning stockyards, terminal railroads and that such railroads are a necessary adjunct to the operation of stockyards; admits that such railroads are, with respect to their rates and charges, under the control of and subject to regulation by the Interstate Commerce Commission; denies that prior to the entry of said decree these petitioners and the other defendants named therein were not guilty of any unfair practices or illegal
[fol. 366] acts with respect to the operation of said stockyards terminal railroads; on the contrary, this intervener alleges that such operation constituted an integral part of the general plan or scheme denounced by said consent decree; this intervener denies that there is no reason for the divestment of the ownership by petitioners of said stockyards terminal railroads and denies that it is in the interest of the public and of orderly and efficient marketing of livestock to permit petitioners to operate such railroads, or that the regulation and control of said railroads by the Interstate Commerce Commission affords adequate protection and guaranty against illegal or unfair practices which the public interest requires, or that the injunction, with respect to such ownership, is unnecessary or against public interest.

12. For answer to the allegations contained in paragraph one of Part XII of said amended petition, this intervener says that the prohibitory provisions of said Packers and Stockyards Act are of the character and were enacted for the purposes and with the legislative intent mentioned and set forth in paragraph 10 of this answer; denies that said Packers and Stockyards Act provides complete, equi-

table or effective regulation of meat packers and stockyards independently of the provisions of said decree, or that the same renders said decree unnecessary. On information and belief this intervener alleges that the petitioners and other defendants parties to the decree have, since the passage of the Packers and Stock Yards Act, almost completely circumvented the intent and purpose thereof and have established private stockyards wherein the great bulk of their purchases in live stock is made, and have consistently and continuously expanded and acquired further private yards in order to defeat the purposes and objects of the said Packers and Stock Yards Act, to the detriment of live stock producers and the public in general.

[fol. 367] 13. For answer to the allegations contained in paragraph one of Part XIII of said amended petition, this intervener denies that the decision in the case of U. S. v. U. S. Steel Corp., 251 U. S. 417, constitutes a new interpretation of the anti-trust laws of the United States. For further answer to the allegations contained in said paragraph this intervener says that the Attorney General, who conducted the proceedings which resulted in said consent decree, did not proceed against the defendants named therein on the theory that the mere "potential" power of said defendants constituted a violation of the anti-trust laws, but on the contrary said proceedings were instituted and conducted on the theory that said defendants were exercising and threatening to exercise the power of monopoly and were engaging in and threatening to engage in numerous other violations of the anti-trust laws of the United States. Your intervener alleges that the fact that others had been found not guilty of violating the Sherman Act does not excuse the petitioners, but on the contrary in Swift & Co. v. U. S., 276 U. S. 311, which was decided since the decision in the Steel Corporation case was rendered, the Supreme Court of the United States held that this court had the "power to construe the pleadings, and, in so doing, to find in them the existence of circumstances of danger which justified compelling defendants to abandon all participation in these businesses, to divest themselves of their interests therein, and to abstain from acquiring any interest hereafter". Your intervener denies that any changes or new interpretations of the anti-trust

laws make modification of said consent decree necessary in order to make it consistent with said laws as interpreted in the Steel Corporation case, or for any other purpose, or at all.

14. For answer to the allegations contained in paragraphs 1 to 6, inclusive, of Part XIV of said petition, this intervener alleges that as to the statistics and data contained in said paragraphs 1, 3, 4 and 6, with respect to [fol. 368] the slaughterage of cattle, calves, sheep, lambs and hogs, and with respect to the percentage of the total volume of butter, eggs, poultry, cheese, oleomargarine, lard substitutes and hides which were handled by the petitioners during the year 1929, as set forth in said paragraph 1; and with respect to the invested capital of said petitioners, percentage of profit on investment and profit per dollar of sales per year for 1920 to 1929, inclusive, as set forth in said paragraph 3; and with respect to the number of non-defendant meat packers and local slaughterers in the United States and the percentages of slaughterage conducted by them during the year 1929, as set forth in said paragraph 4; and with respect to the profits of petitioners per dollar of sales per year from 1922 to 1929, and the comparison of said profits with the profits realized by non-defendant meat packers, as set forth in said paragraph 6, and with respect to each and every one of said allegations this intervener says that it is without knowledge. Your intervener admits that the volumes of businesses mentioned in said paragraph 1 are relatively small as compared with the total business in said lines, but says that said businesses handled by petitioner constitute an important factor, which, when considered in connection with the volumes of such businesses handled by the other defendants named in said decree, are entirely sufficient not only to suggest but to constitute a monopoly, or threat of danger of monopoly if the provisions of said consent decree are modified as prayed for by said petitioners; that as to whether said petitioners act individually, severally and independently of others in the conduct and operation of their businesses this intervener is without knowledge; admits that while the volume of said businesses handled by said petitioners may be too small to enable them to dominate the meat packing business in

the United States or to control or manipulate the prices of livestock or packing house products, or to restrain trade or to suppress competition therein, or to constitute [fol. 369] a danger of such domination, control, manipulation, or restraint in the future, your intervener alleges that for the purposes of this proceeding the volumes of said businesses handled by petitioners must be considered in connection with the volumes thereof handled by the other defendants named in said decree, and when so considered the combined volumes of said businesses are entirely sufficient to enable the petitioners and the other defendants named in said decree to dominate the meat packing business of the United States, to control and manipulate the prices of livestock and packing house products, to restrain trade and suppress competition therein, and to constitute a danger of future domination, control, manipulation and restraint of trade with respect to said businesses.

That as to the allegations contained in said paragraph 2 to the effect that petitioners buy livestock in competition with all other packers and with all other buyers, and that they sell meat in competition with all of the large packers as well as the small packers and slaughterers, and as to similar allegations contained in said paragraph 5, this intervener is without knowledge. In this connection this intervener says that if said allegations are true it is wholly due to the beneficial results of the prohibitions and provisions of said consent decree, and petitioners have not given and cannot give any adequate assurance if said consent decree is modified that they will not restore the conditions charged in the bill of complaint, upon which said consent decree was based, and which were prohibited by the provisions of said decree.

15. For answer to the allegations contained in paragraphs 1 to 3, inclusive, of Part XV of said amended petition, this intervener denies that on account of the so-called present day economic conditions, merchandising methods or interpretations or changes thereof said petitioners cannot monopolize the meat packing industry nor [fol. 370] restrain trade or commerce therein, nor constitute any threat or danger of monopolization or restraint of trade if the provisions of said consent decree are modified as prayed for by petitioners; that as to whether or

not petitioners are operating and conducting their business individually and severally and independently of others and not in combination, agreement or conspiracy in restraint of trade or commerce, or in any attempt to create a monopoly, this intervener is without knowledge; and for further answer to said allegations says that the same, if true, amount to nothing more than a statement to the effect that petitioners are not violating the provisions of said decree; this intervener denies that if the restrictions of said decree are removed, as prayed for by petitioners, they cannot monopolize the meat packing business, nor the wholesale grocery business, nor the chain store business, nor any other line of business, nor restrain trade or commerce therein, nor constitute any threat or danger of monopolization or restraint of trade in the future, but on the contrary this intervener says that if petitioners have the will to do so there is a high degree of probability that they will participate in the restoration of the conditions which prevailed among the defendants named in said decree at and prior to the time it was entered; this intervener denies that said decree has become unjust, unfair, inequitable or oppressive, and denies that it is unnecessary or lessens competition or is against public interest; denies that on account of any of the facts and conditions set forth in said petition said decree should be modified, as prayed for by petitioners, or at all; denies that the petitioners are prevented by said decree from adjusting their businesses to modern economic trends and changed conditions.

Further answering the allegations contained in said paragraph 2 this intervener says that the same are statements of mere generalities which were equally applicable at the time said consent decree was entered as at the present [fol. 371] time, and said decree was entered by and with the consent of petitioners with full knowledge of the so-called modern trends in business.

16. For further answer to the allegations contained in said Amended Petition this intervener says that prior to the entry of said consent decree of February 27, 1920, the petitioners and other defendants named in said decree were being investigated by certain departments of the Government and the Attorney General was about to institute proceedings against them under the criminal provisions of the anti-trust laws of the United States and that certain

Grand Jury proceedings were then pending; said defendants thereupon proposed that if the Attorney General would consent to such an arrangement as a complete adjustment of the various existing controversies between the United States and said defendants, and would dismiss all Grand Jury proceedings then pending and would forego further prosecutions against them, said defendants would consent to the entry of a decree by the Supreme Court of the District of Columbia, the exact terms and provisions of which decree were submitted in written form. Thereupon, the Attorney General, acting for and in behalf of the United States of America, accepted said proposal, agreed to comply and did thereafter comply with all of the conditions on which said proposal was based. Thereafter and in pursuance of said agreement, and as part and parcel thereof, the Supreme Court of the District of Columbia made and entered said decree in the exact and identical form previously agreed to by the parties; and that thereby the petitioners, and other defendants named in said decree, jointly, severally, and unconditionally agreed that they, and each of them, would perpetually and in good faith comply with all of the provisions of said consent decree. For further particulars as to the terms of said agreement said decree is hereby referred to, incorporated herein by reference and made a part hereof.

[fol. 372] This intervener further says that it represents a large and well defined portion of the public, for the protection of which the United States entered into said agreement; that the modifications of said decree now sought by the petitioners would leave this intervener in an embarrassed and disadvantageous position if compelled to pursue the remedies against the defendants named in said decree, including these petitioners, which this intervener abandoned in reliance upon said decree.

This intervener further says that in addition to being and representing a large and well defined portion of the public represented by the United States in making and entering into said agreement, it has a direct and immediate interest in the maintenance of said decree in its entirety and as a whole; that while the members of this intervener are engaged in the wholesale grocery business and are not engaged in the handling of fresh meats, it avers that each and every part of said decree is a constituent

and inseparable part thereof, and that the modification of said decree in any particular would have the effect of nullifying the agreement upon which it is based, and would seriously endanger, if not entirely destroy, said decree in its entirety.

In Swift & Co. v. United States, 196 U. S. 375, the Supreme Court of the United States had the following to say with regard to the unity of a plan or scheme which constitutes a monopoly as distinguished from the constituent elements thereof:

"The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. Moreover, whatever we may think of them separately, when we take them up as distinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful, and that intent can make no difference. [fol. 373] But they are bound together as the parts of a single plan. The plan may make the parts unlawful. Aikens v. Wisconsin, 195 U. S. 194, 206. * * * The unity of the plan embraces all the parts" (p. 396).

17. For further answer to said Amended Petition this intervener says that by virtue of the facts hereinbefore set forth, particularly the facts set forth in paragraph 22 hereof, and of the facts hereinafter alleged, said petitioners are estopped from obtaining a modification of any of the provisions of said consent decree, have been guilty of laches and do not come into this Court with clean hands such as would justify decision by a court of equity in their favor. [fol. 374] This intervener further alleges that in July, 1919, proceedings were instituted before the Interstate Commerce Commission by this intervener alleging that the petitioners and other meat packers were obtaining preferential and discrimingtory freight rates from the railroads. These petitioners and other defendants named in the decree intervened in said proceedings and in a brief filed therein by them called attention to the fact that said consent decree had been made and entered, and stated that the defendant packers were carrying out in good faith the terms of said decree. The Interstate Commerce Commission in its decision said:

"They (the packers) assert that the entry of the decree eliminated the competition to which the grocers object, and will bring about a result more favorable of the complainants than any obtainable by an order in this proceeding * * *" (I. C. C. No. 10745, June 22, 1921).

[fol. 375] Your intervener further alleges that in consenting to said decree these defendants imposed upon and sought to take advantage of this court; while consenting to said decree such petitioners believed same was invalid and unenforceable for various reasons later urged before this court; that therefore certain of these defendants have never complied with the decree but as above set forth obtained extensions from time to time until further extensions were refused; that in the first instance these petitioners caused and incited the California Cooperative Canneries, a concern dominated and controlled by Armour & Company, to attack the decree and seek to have same set aside; that only when this court refused to allow the California Cooperative Canneries to intervene for this purpose these petitioners openly attacked the decree and seek to have same declared invalid; that after the decree was declared in all respects valid by the Supreme Court of the United States these petitioners were successful in having the decree suspended through the intervention of the California Cooperative Canneries, which intervention was subsequently vacated by the Supreme Court of the United States which declared the decree enforceable and that "all obstacles to the enforcement of the decree should have been promptly removed"; it was not until such decision and only after the lapse of many years that these petitioners brought this proceeding, then alleging for the first time that the decree should be vacated or modified for the reasons set forth in their petitions.

18. Further answering said Amended Petition this intervener says that said petition does not state facts sufficient to entitle the petitioners to the relief prayed for in said petition, and that this Court is without power or jurisdiction to grant any modification of the said decree, or any relief whatsoever.

[fol. 376] Wherefore this intervener prays that these petitioners take nothing by virtue of said amended petition, but that the same be dismissed.

Breed, Abbott & Morgan, Frank K. Nebeker, Attorneys for Intervener National Wholesale Grocers' Association of the United States.

Duly sworn to by Sylvan L. Stix. Jurat omitted in printing.

[fol. 377] In Supreme Court of District of Columbia

Equity No. 37623

Answer of Intervener National Wholesale Grocers' Association of the United States to Amended Petition of Armour & Company et al.

Comes now National Wholesale Grocers' Association of the United States, intervener herein, and for answer to the Amended Petition of Armour & Company, et al., for modification of the consent decree of February 27, 1920, says.

1. This intervener in answer to the allegations contained in paragraphs 1 to 4, inclusive, of said Amended Petition, respectfully refers to the petition, answers and decree entered in this action for the provisions thereof. This intervener further alleges that while said stipulation contained the statement quoted in paragraph 3 of said petition and while said statement was incorporated in said decree, the Supreme Court of the United States in Swift & Co. v. United States, 276 U. S. 311, expressly held that said statement in the decree did not deprive the court which entered the decree of jurisdiction, and also held that said court had power "to construe the pleadings, and in so doing, to find in them the existence of circumstances of danger which justify compelling the defendants to abandon all participation in [fol. 378] these businesses, to divest themselves of their interest therein and to abstain from acquiring any interest hereafter."

The Supreme Court held, as was stated by Mr. Justice Brandeis in United States v. California Cooperative Canneries, 179 U. S. 461, at p. 555, "that the consent decree

* * * was in all respects valid and enforceable," and at p. 559, "all obstacles to the enforcement of the consent decree should have been promptly removed."

2. For answer to the allegations contained in paragraph 5 of said Amended Petition this intervener admits that the policy of the Sherman Anti-trust Act is to prevent monopolies, combinations, agreements and conspiracies in restraint of trade and commerce; denies that said consent decree has had the effect of reducing commerce or competition in the sale of the commodities mentioned in said paragraph; denies that said decree, unless construed, modified or amended will have the future effect of reducing such commerce or competition in sale of said commodities. This intervener avers on the contrary that said decree has had the effect of stimulating trade and commerce in the sale of said commodities by enabling numerous individuals and concerns to engage in the business of manufacturing and selling said commodities to an extent and on a scale which would have been impossible if the packer defendants named in said decree had not been placed under the restraints and injunctions thereof. This intervener denies that if the consent decree of February 27, 1920, had been entered in a suit between private parties it would have been violative of the Sherman Act. This intervener alleges that the contentions made in said paragraph 5 were presented to the United States Supreme Court in the above mentioned cases and were rejected by that court and for a complete answer to these allegations reference is made to the opinions of the Supreme Court of the United States in the above mentioned cases.

[fol. 379] 3. For answer to the allegations contained in paragraph 6 of said Amended Petition this intervener denies that said consent decree was entered on supposition, denies that there have been any radical and material changes in the production, manufacture, sale and distribution of food products; admits that a keener and more active competition now exists in the purchase of livestock, meats and meat products than existed when said decree was entered and alleges that such conditions are largely due to said decree; denies that a monopoly therein cannot be acquired by petitioner alone or in combination with others if said de-

decree is modified in any essential particular; denies that the events and changes mentioned in said paragraph establish or have a tendency to establish that it will be impossible for the defendants named in said decree to acquire a monopoly in the handling of the commodities mentioned in said paragraph if they are relieved from the restraints of said decree; admits that said consent decree has served a useful purpose, but denies that it is no longer necessary for the maintenance of competitive conditions or for the purpose of preventing a monopoly in the sale and distribution of said food products; denies that any of the parts of said consent decree are inequitable or detrimental to public interest, or impose on the petitioners hardships not warranted by existing facts. Your intervener alleges that the continuance of the decree is essential in order to preserve free and open competition in food products and to protect the public generally.

4. Answering paragraph 7 of said Amended Petition this intervener denies that said consent decree prevents the petitioners from engaging in lawful businesses on the theory that the "potential power" of the defendants named in the decree was a menace, or that defendants might thereby acquire a monopoly. For further answer to this allegation and to the allegation contained in said paragraph 7 with reference to the alleged opinion of the Attorney General, [fol. 380] who conducted the proceedings which resulted in said consent decree, reference is made to the Bill of Complaint filed in said cause, from which it appears that the proceedings were instituted on the theory that the defendants named in said decree were exercising and were threatening to exercise the power of monopoly, and were engaging in and threatening to engage in numerous other violations of the anti-trust laws of the United States. Your intervener alleges that the fact that others have been found not guilty of violating the Sherman Act does not excuse the defendants in this proceeding and that the Supreme Court of the United States has held that this Court had the "power to construe the pleadings, and, in so doing, to find in them the existence of circumstances of danger which justified compelling the defendants to abandon all participation in these businesses, to divest themselves of their interest therein, and to abstain from acquiring any interest hereafter" (Swift & Co. v. U. S., supra, at p. 329).

5. Answering paragraph 8 of said Amended Petition this intervener admits that the Supreme Court of the United States commented on the mere effect of size of a concern as an element of a monopoly. But in doing so said court did not establish or lay down any new rule with regard to what constitutes a monopoly under the anti-trust laws of the United States. Further answering said paragraph 8, this intervener admits that the Supreme Court held that 45 per cent control of an industry in itself does not constitute a monopoly, but it did not hold or infer that such percentage of control would not constitute a monopoly if the power thereby obtained were coupled with such unlawful purposes as were charged in the Bill of Complaint filed by the Attorney General in this cause. This intervener says that as to whether the primary defendants named in said decree have become active competitors since said decree was entered, and as to whether they are not parties to any con-
[fol. 381] tracts, combinations or conspiracies in the violation of said decree, this intervener is without knowledge and therefore denies same.

6. Answering paragraphs 9 to 12, inclusive, of said Amended Petition, this intervener admits that since said consent decree was entered Congress has enacted said Packers and Stockyards Act, and that certain of the provisions of said act are substantially as set forth in said paragraphs of said Amended Petition; that in this connection this intervener says that the prohibitory provisions of said Packers and Stockyards Act are in the main merely declaratory in character, and that said act as a whole provides for regulation by the Secretary of Agriculture of only a part of the activities and practices enjoined by the consent decree; that said Packers and Stockyards Act was enacted by Congress with full knowledge of the provisions of said consent decree, and was intended to supplement but not supersede the same; that the purpose of Congress in enacting said act was to place the packers under the constant surveillance of the Secretary of Agriculture in order to insure obedience to the decree, as well as to prevent the packers from indulging in unlawful practices other than those mentioned in the decree. Your intervener further alleges that said Packers and Stockyards Act applies only to the manufacture and distribution of meat food products and would not apply to trans-

actions and dealings of these petitioners in unrelated lines if permitted to engage therein. Upon information and belief changes and amendments were obtained by these petitioners in this legislation on the plea that the consent decree made these changes and amendments proper.

[fol. 382] 7. Answering paragraph 13 of said Amended Petition this intervener says that said decision of the Supreme Court of the United States in the case of Wolff Packing Co. v. Court of Industrial Relations, does not deal with any question involved in these proceedings, or with any question arising from the anti-trust laws of the United States; that the sole question presented and decided in that case was whether the packing industry within the State of Kansas was so clothed with a public interest as to empower the State of Kansas to regulate the relations between packers located in that State and their employees, particularly with reference to wages and compensation of such employees. The plain meaning of the four sentences quoted in said paragraph 13 from the opinion in the case is that the danger of local monopolistic control in the preparation of foods would be slight, so long as foods were permitted to enter the State from outside sources. It is doubtless true that, as stated by the Court in said opinion, on the date said opinion was rendered, June 11, 1923, food was being produced in greater volume and variety than ever before, and that there was no monopoly in the preparation of foods. But in this connection intervener says that said decision was rendered more than three years after said consent decree was entered and while the injunctions contained therein were in full force and effect. Your intervener further alleges that following the decision in Wolff Packing Company v. Court of Industrial Relations, it made its decisions above referred to holding the injunctions of the consent decree to be justified, valid and enforceable.

8. That as to the allegations contained in paragraph 14 of said Amended Petition, concerning alleged losses sustained by the defendants named in said consent decree subsequent to the entry thereof, this defendant is without knowledge, and therefore denies same. Your intervener alleges upon information and belief that said losses in the [fol. 383] fiscal year 1921 were not due to the consent decree, but to other causes, and that this allegation is also true

with respect to the failure of Armour & Company to pay dividends. As to the allegations contained in paragraph 15 of said Amended Petition, concerning the insolvency and receivership of Wilson & Company, Inc., in 1924, and the causes thereof, this intervener is without knowledge, but alleges upon information and belief that the causes thereof were other than the consent decree.

9. Answering paragraphs 16 to 19, inclusive, of said Amended Petition, this intervener admits that Armour & Company has purchased the physical properties of Morris & Company; that proceedings were instituted by the Secretary of Agriculture and that after an extensive hearing said proceedings were dismissed; admits that during the war period the Government stimulated the production of livestock and to some extent controlled the distribution of packer products; admits that petitioner, Armour & Company, greatly expanded its packing plants; that following the war there was great financial and business depression and that thereby said petitioner's volume of business was greatly reduced, as compared with said petitioner's volume of business during the war period. In this connection this intervener says that it is informed and believes, and therefore alleges that during said war period said petitioner realized enormous profits and enjoyed unprecedented prosperity. This intervener admits that at said hearing before the Secretary of Agriculture evidence was introduced which tended to show that active competition existed in the buying of livestock and in the sale of meats, but, as this intervener is informed and believes and therefore alleges, such condition was largely due to the wholesale restraints and provisions contained in said decree. Your intervener alleges that the acquisition by Armour & Co. of the business of [fol. 384] Morris & Company renders it essential that the consent decree be maintained in full force and effect to preserve free and open competition and protect the public interest.

10. Answering paragraphs 20, 21 and 22 of said Amended Petition this intervener admits that said trustees mentioned therein conducted hearings and made said report, but says that said hearings were entirely informal and said report has no probative value in these proceedings; that in so far

as said report may be considered to have any probative value the sum and substance thereof is that it was unnecessary for said trustees to exercise the limited powers conferred upon them by the court.

11. Answering paragraphs 23 to 26, inclusive, of said Amended Petition, concerning changes in the capital stock, funded debt and corporate organization of Armour & Company, and its subsidiaries since the entry of said decree, this intervener is without knowledge and therefore denies same.

12. Answering paragraph 27 of said Amended Petition, this intervener denies that said intervener could not have obtained such a decree as that mentioned in said paragraph in a proceeding instituted in its own name and behalf. On the contrary, this intervener alleges that said decree could have been so obtained by showing that the handling of such unrelated lines, and the selling of meats at retail, were in furtherance of an existing monopoly or conspiracy, such as existed in the meat and other food industries at the time said decree was entered.

13. Answering paragraphs 28 and 29 of said Amended Petition this intervener denies that if the decree of February 27, 1920, is so modified as to permit the defendants to engage in the business of dealing in said unrelated commodities, the interveners will not thereby be subjected to any unfair or illegal prejudice; denies that said decree is [fol. 385] unnecessary to protect the wholesale grocers against the effect of said advantages in transportation; denies that the sole motive of this intervener in opposing modification is to avoid increased competition in the wholesale grocery business; and alleges that one of the reasons why the Interstate Commerce Commission refused to grant the full relief demanded in the proceeding referred to was that the Packers brought to the attention of the Commission the entry of the consent decree, represented that they were carrying out the terms of said decree in good faith, and asserted that the entry of said decree eliminated the competition to which the grocers objected and would bring about a result more favorable to the complainants than any obtainable by an order in that proceeding (62 I. C. C., Rep. 375; June 22, 1921).

14. Answering paragraph 30 of said Amended Petition this intervener says that it is without knowledge as to the truth of the allegations thereof and therefore denies same.

15. Answering paragraphs 31 and 32 of said Amended Petition this intervener states that it is without knowledge as to the truth of the allegations of facts contained therein and therefore denies the same and further denies that by reason of the facts stated in said paragraph it would be impossible for any packer, or group of packers, to establish and maintain for any length of time a monopoly in the purchase of livestock.

16. Answering paragraph 33 of said Amended Petition this intervener says that it is without knowledge as to the truth of the allegations of fact contained therein and therefore denies same but alleges that if under present conditions local slaughterers and packers, non-slaughtering packers, periodical packers, foreign killers and certain selling agencies are able to do business, this is largely due to the effects of said consent decree; this intervener verily believes and, therefore, alleges that if said decree is modified, as [fol. 386] prayed for in said petition, a large number of said manufacturers and dealers will be entirely eliminated as competitors of these petitioners and of the other powerful packers named in said decree.

17. Answering paragraph 34 of said Amended Petition this intervener denies that at said hearing before the Secretary of Agriculture in the Armour-Morris proceeding it was established, or that it is a fact that it would not be possible for any combination of packers to create a monopoly in the packing industry either for the reasons set forth in said paragraph or for any other reasons, except such reasons as arise from the continuation of the restraints provided for in said consent decree. This intervener further says that the opinions and conclusions designated as reasons in said paragraph are no more applicable today than at the time said decree was entered.

18. For answer to paragraphs 35 to 56, inclusive, of said Amended Petition, this intervener denies that radical and extensive changes in marketing conditions have taken place since the consent decree and alleges that insofar as said paragraphs correctly set forth marketing conditions at the

present time such conditions are the normal development of conditions existing at the time the decree was entered and clearly anticipated at that time; admits that since said decree was entered there have been increases in the number, size and volume of operations of chain stores and chain store organizations, and that there have been many consolidations and mergers among manufacturers and distributors of food products; admits that certain chain stores are engaged in selling meats at retail, that certain non-defendant packers are operating meat stores, and that many so-called voluntary chains have been formed. This intervener says that it has no knowledge as to the figures and statistics stated in paragraphs 37 to 56, inclusive, and therefore denies same.

[fol. 387] In connection with the allegations contained in said paragraphs 35 to 56, inclusive, this intervener says that all of the so-called trends and developments in the manufacture and distribution of foods and other commodities were in operation at the time said consent decree was entered; that the inferences drawn from said facts by petitioners are speculative and insusceptible of verification and are not correctly drawn; that even if such facts had existed at the time said consent decree was entered the same as at present they would not have constituted any defense to the Bill of Complaint filed in this cause; that said facts show on their face that under existing conditions the channels of distribution for the marketing of products manufactured by petitioners, and the other defendants named in said decree, are entirely adequate to enable said defendants to market their products; that petitioners have given and can give no assurance that if relieved from the restraints of said decree they, or the other defendants named in said decree, will not proceed to the establishment of still greater dominance in the food industries than existed at the time the suit was instituted. This intervener denies the allegation contained in paragraph 44 of said Amended Petition to the effect that the chain store organizations "prove that no defendant to this suit, or even all of the defendants to this suit, could possibly effect a monopoly or restrain trade if permitted to engage in the business of selling meats at retail, and dealing in the commodities known as unrelated lines." This intervener denies a similar allegation contained in paragraph 56 of said amended petition.

19. Answering paragraphs 57 to 61, inclusive, of said Amended Petition this intervener admits that certain of the wholesale grocers of the United States are the owners of various extensively advertised and well known brands and trade names and manufacture part of their products under their own private brands; admits that trade-marks of individual wholesale grocers, which are in fact their [fol. 388] own trade names or brands, cannot lawfully be imitated by others, but the products so sold under particular trade-marks or brands may lawfully be and are sold by others and are susceptible of constituting an integral part of a monopoly in the handling of food products; that as to whether or not the defendants named in said consent decree have suffered substantial losses in business during recent years, this intervener is without knowledge and therefore denies same and further denies such losses were the result of the consent decree; this intervener says that the ownership of private refrigerator cars operated over public tracks by the defendants named in said decree is only one of the grounds on which the wholesale grocers oppose the removal of the restrictions contained in the decree; alleges that insofar as the Interstate Commerce Commission held that the use by the packers of refrigerator cars does not constitute an undue or unlawful prejudice to the wholesale grocer, such decision was largely influenced by the entry of the consent decree; that said wholesale grocers oppose any modification of said decree on all of the grounds alleged in the Bill of Complaint upon which said decree was based; this intervener denies that the wholesale grocers are not prejudiced under conditions existing today with respect to the building of hard roads or the development and extension of motor trucks; admits that the wholesale grocers are opposed to any modification of the decree which will enable the defendants to said decree to adopt methods or measures in violation thereof; as to the allegations that the trend toward integration may, in the future, develop to such an extent that the wholesale grocers will be entirely eliminated as a separate and distinct factor in the merchandising system, this intervenor says that it is without knowledge and further says that such allegation is a matter of pure speculation; denies that it is inequitable to permit wholesale grocers to intervene in this action for the purpose of op- [fol. 389] posing any modification of said consent decree,

and it has intervened in these proceedings solely for the purpose of asserting rights expressly mentioned in the order of this court granting it the right to intervene.

20. Answering paragraphs 62 to 66, inclusive, of said Amended Petition this intervener says, that as to the allegations contained therein concerning the attitude toward the proposed modification of the decree, of livestock growers, competitors of petitioners, commission men, traders, speculators, order buyers, market reporters and economists, this intervener has no knowledge and therefore denies same; this intervener denies that the requested modification of said decree is favored by a majority of the general public and alleges upon information and belief that the resolutions adopted by the Associations referred to in said paragraphs were instigated and prepared in whole or in part by these petitioners and that said Associations do not favor any modification of the decree directly affecting them or their members. Your intervener alleges that the general public favors the continuance and maintenance of the decree and its strict enforcement and opposes any modification thereof.

21. Answering paragraphs 67 to 76, inclusive, of said Amended Petition this intervener denies that the wholesale grocers have opposed, or that they are opposing the modification of said decree because of selfish interests or with the desire to restrict or limit competition in the particular business in which they are engaged; alleges that it is without knowledge of the facts set forth as to petitioners' businesses and therefore denies same, and further alleges that if the volume of business handled by the defendants named in said decree has been reduced by the restrictions provided for in said decree, but this has been true from the time said decree was entered and was within the contemplation of the parties at the time they entered into the agreement upon which said decree was based; admits that certain of the [fol. 390] products sold by said defendants are perishable, but as to whether or not said defendants have been confronted with the task of finding new and immediate outlets and of avoiding forced sales, or as to whether said defendants have frequently reduced their prices to chain store buyers to below prevailing market prices, this intervener is without knowledge, but does allege if that be true it is in

no way different from the common practice of numerous other manufacturers competing with one another in selling to chain stores and therefore denies same; admits that said decree prohibits the defendants named therein from engaging in the retail business and from handling lines of commodities not related to the packing industry, and that others are permitted to do so. In this connection this intervener says that the situation in these respects was within the contemplation of the parties at the time said agreement was entered into and said decree was entered. The same is true of all of the allegations contained in paragraph 75 of said petition. This intervener denies that said consent decree is against the public interest or that it restrains competition contrary to the principles of the Sherman Anti-trust Act and alleges that the decree and its maintenance in full force and effect is essential to the public interest; denies that if said decree is modified the defendants named therein will reduce prices of said commodities.

22. For further answer to the allegations contained in said Amended Petition this intervener says that prior to the entry of said consent decree of February 27, 1920, the petitioners and other defendants named in said decree were being investigated by certain departments of the Government and the Attorney General was about to institute proceedings against them under the criminal provisions of the anti-trust laws of the United States and that certain Grand Jury proceedings were then pending; said defendants thereupon proposed that if the Attorney General would [fol. 391] consent to such an arrangement as a complete adjustment of the various existing controversies between the United States and said defendants, and would dismiss all Grand Jury proceedings then pending and would forego further prosecutions against them, said defendants would consent to the entry of a decree by the Supreme Court of the District of Columbia, the exact terms and provisions of which decree were submitted in written form. Thereupon, the Attorney General, acting for and in behalf of the United States of America, accepted said proposal, agreed to comply and did thereafter comply with all of the conditions on which said proposal was based. Thereafter and in pursuance of said agreement, and as part and parcel thereof, the Supreme Court of the District of Columbia made and en-

tered said decree in the exact and identical form previously agreed to by the parties; that thereby the petitioners, and other defendants named in said decree, jointly, severally, and unconditionally agreed that they, and each of them, would perpetually and in good faith comply with all of the provisions of said consent decree. For further particulars as to the terms of said agreement said decree is hereby referred to, incorporated herein by reference and made a part hereof.

This intervener further says that it represents a large and well defined portion of the public, for the protection of which the United States entered into said agreement; that the modifications of said decree now sought by the petitioners would leave this intervener in an embarrassed and disadvantageous position if compelled to pursue the remedies against the defendants named in said decree, including these petitioners, which this intervener abandoned in reliance upon said decree.

This intervener further says that in addition to being and representing a large and well defined portion of the public represented by the United States in making and entering into said agreement, it has a direct and immediate [fols. 392 & 393] interest in the maintenance of said decree in its entirety and as a whole; that while the members of this intervener are engaged in the wholesale grocery business and are not engaged in the handling of fresh meats, it avers that each and every part of said decree is a constituent and inseparable part thereof, and that the modification of said decree in any particular would have the effect of nullifying the agreement upon which it is based, and would seriously endanger, if not entirely destroy, said decree in its entirety.

In Swift & Co. v. United States, 196 U. S. 375, the Supreme Court of the United States had the following to say with regard to the unity of a plan or scheme which constitutes a monopoly as distinguished from the constituent elements thereof:

"The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. Moreover, whatever we may think of them separately, when we take them up as dis-

tinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful, and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful. Aikens v. Wisconsin, 195 U. S. 194, 206. * * * The unity of the plan embraces all the parts" (p. 396).

23. For further answer to said Amended Petition this intervener says that by virtue of the facts hereinbefore set forth, particularly the facts set forth in paragraph 22 hereof, and of the facts hereinafter alleged, said petitioners are estopped from obtaining a modification of any of the provisions of said consent decree, have been guilty of laches, and do not come into this Court with clean hands such as would justify decision by a court of equity in their favor. [fol. 394] This intervener further alleges that in July, 1919, proceedings were instituted before the Interstate Commerce Commission by this intervener alleging that the petitioners and other meat packers were obtaining preferential and discriminatory freight rates from the railroads. These petitioners and other defendants named in the decree intervened in said proceedings and in a brief filed therein by them called attention to the fact that said consent decree had been made and entered, and stated that the defendant packers were carrying out in good faith the terms of said decree. The Interstate Commerce Commission in its decision said:

"They (the packers) assert that the entry of the decree eliminated the competition to which the grocers object, and will bring about a result more favorable to the complainants than any obtainable by an order in this proceeding * * *" (I. C. C. No. 10745, June 22, 1921).

[fol. 395] Your intervener further alleges that in consenting to said decree these petitioners imposed upon and sought to take advantage of this court; while consenting to said decree such petitioners believed same was invalid and unenforceable for various reasons later urged before this court; that therefore certain of these defendants have never complied with the decree but as above set forth obtained extensions from time to time until further extensions were refused; that in the first instance these peti-

[fol. 396] tioners caused and incited the California Cooperative Canneries, a concern dominated and controlled by Armour & Company, to attack the decree and seek to have same set aside; that only when this court refused to allow the California Cooperative Canneries to intervene for this purpose these petitioners openly attacked the decree and seek to have same declared invalid; that after the decree was declared in all respects valid by the Supreme Court of the United States these petitioners were successful in having the decree suspended through the intervention of the California Cooperative Canneries, which intervention was subsequently vacated by the Supreme Court of the United States which declared the decree enforceable and that "all obstacles to the enforcement of the consent decree should have been promptly removed"; it was not until such decision and only after the lapse of many years that these petitioners brought this proceeding, then alleging for the first time that the decree should be vacated or modified for the reasons set forth in their petitions.

24. Further answering said Amended Petition this intervener says that said petition does not state facts sufficient to entitle the petitioners to the relief prayed for in said petition, and that this Court is without power or jurisdiction to grant any modification of the said decree, or any relief whatsoever.

Wherefore this intervener prays that these petitioners take nothing by virtue of said amended petition, but that the same be dismissed.

Breed, Abbott & Morgan, Frank K. Nebeker, Attorneys for Intervener National Wholesale Grocers' Association of the United States.

[fols. 397 & 397½] *Duly sworn to by Sylvan L. Stix. Jurat omitted in printing.*

[fol. 398] In Supreme Court of District of Columbia

Motion to Dismiss by Counsel for National Wholesale Grocers' Association — Page 45 of the Official Stenographic Report Tues. Oct. 7, 1930

Mr. Breed: If your Honor please, I wish to make a motion, to renew our motion to dismiss the proceeding, so as to

get clearly before the Court and on the record a summary of our grounds.

The Court: I can not entertain that motion at present. A motion has already been filed to dismiss. I will not entertain another motion. You may take an exception.

Mr. Breed: I would only suggest to the Court, I recognize the point of the ruling. Would it aid us in the trial, instead of having us make the motion at the time when the evidence was offered? We might make it now, state the grounds that I have to state, which we will have to renew at the time.

The Court: I have already ruled on the motion to dismiss the petition to modify the decree. I will not hear that motion again. I will hear, of course, proper objections to evidence, when it is offered.

Mr. Breed: I take an exception.

[fol. 399] OBJECTIONS BY COUNSEL FOR NATIONAL WHOLESALE GROCERS' ASSOCIATION TO THE TESTIMONY — PAGES 88 AND 89 OF OFFICIAL STENOGRAPHIC REPORT. Oct. 7, 1930

Mr. Breed: If the Court please, before the witness answers, I presume this is the proper time for me to enter my objection to the testimony.

The Court: Very well.

Mr. Breed: If the Court please, I object to the testimony on the ground that it is immaterial, irrelevant, and that it is improper for this Court to receive any testimony under the terms of this petition.

The grounds of my objection are as follows:

1. That the United State Supreme Court has sustained the decree of February 27, 1920, as a final enforceable judgment, and the term of Court at which the decree was entered expired long prior to the filing of these petitions.

2. That the petitions do not——

The Court: Was not that all covered by your motion to dismiss the petitions?

Mr. Breed: No, there are several additional reasons.

2. That the petitions do not state facts sufficient to give this Court any jurisdiction.

The Court: I will not hear that, sir. That has already been passed upon. I cannot permit that.

Mr. Breed: May I just recite it on the record quickly?

The Court: I will not permit unnecessary delay in the progress of this petition. It is contrary to the practice of a [fol. 400] court of equity.

Mr. Breed: If the Court please, I am merely stating the grounds of my objection.

The Court: I do not think so. I think you are going through the objections to the petition which have already been disposed of. I will not hear anything further unless you have something which is a real objection to evidence. What is your objection to this question?

Mr. Breed: May I state my objections on the record in order that they may be the basis for the ground of my objection?

The Court: You may file it in writing.

Mr. Breed: I may file it?

The Court: Yes. Proceed, Mr. Hogan.

Mr. Breed: May I except to the Court's ruling?

The Court: Yes. Make a note of the fact that the Court declined to hear it because they are not proper objections to the evidence.

Mr. Breed: But your Honor allows me to file them?

The Court: Yes.

[fol. 401] OBJECTIONS TO TESTIMONY MADE BY COUNSEL FOR NATIONAL WHOLESALE GROCERS' ASSOCIATION APPEARING ON PAGES 274-277, INCLUSIVE, OF THE OFFICIAL STENOGRAPHIC RECORD Oct. 8, 1930

Mr. Williamson: If your Honor please, if you care to at this time, I would like to suggest that the proposed objections heretofore referred to on page 89 of the record be marked for identification and then I can move that they be deemed as read on page 89 of the record where the offer was made.

The Court: I think those were your objections to the evidence of Mr. Daly and I overruled the objection.

Mr. Williamson: For the sake of the record I will ask that these objections be marked for identification, and I

would like to move that they be deemed as read at the proper point in the record.

The Court: It is not necessary that they be marked for identification. You have made the objections and I have overruled them. The record will show that.

Mr. Williamson: May I ask this? The record does not now show any of the grounds stated on this paper as being the grounds of the objection.

The Court: You have made these objections and I have overruled them. I will hand them to the Reporter and he can embody them in the transcript, if that is what you wish.

Mr. Williamson: Very well. Then I would like to say this; rather than to repeat those objections to any other testimony or evidence offered by the petitioner, I would like the record to show that the same objections are made to any and all such testimony or evidence as may be offered by the petitioner.

[fol. 402] The Court: I understand that your objections are made to any other such testimony and the same ruling is made.

(The objections submitted by Mr. Williamson above referred to are as follows:

"In the Supreme Court of the District of Columbia

"Equity No. 37623

"United States of America

v.

"Swift & Company et al.

"The testimony of the witness John F. Daly is objected to on behalf of the intervener, National Wholesale Grocers Association, as incompetent, irrelevant and immaterial, in that

"1. The United States Supreme Court has sustained the decree of February 27, 1920, as a final and enforcible judgment and the term of the court at which said recree was entered expired long prior to the filing of the petitions in this proceeding.

"2. The utmost limit of the Court's jurisdiction is to act in respect to issues between parties actually and properly before the Court. The power and duty to act in respect to

any modification of the consent decree rests exclusively in and with the Attorney General who has no power or right to delegate or attempt to delegate such power and duty to this Court. Therefore, the Court is without jurisdiction to hear or receive any evidence herein.

"3. The petitions do not state facts sufficient to give this Court any jurisdiction in that said petitions do not allege that the parties to the equity proceeding resulting in the consent decree, including the plaintiff—the Govern- [fol. 403] ment of the United States—have consented to the modifications requested in the petition, or any of them.

"4. The Court is without power or jurisdiction to grant the relief prayed for in said petitions or any relief, or to hear or receive any evidence herein because

"(a) The said petitions fail to allege that all of the parties to said consent decree have consented to the modification of said decree and on the contrary the United States of America, plaintiff herein, has filed answers to said petitions and by the Attorney General is present in Court for the stated purpose of opposing modification of said consent decree.

"(b) The economic facts, or alleged facts set forth in said petitions are immaterial and irrelevant.

"(c) It appears from the opening statement of counsel for the petitioners that the proof which will be offered by petitioners would not constitute any basis for modification of said decree.

"(d) The consent decree is a contract which has been sustained by the United States Supreme Court and can not be modified except by the express consent of all the parties to said decree or said contract.

"(e) The proceedings in equity against the petitioners and other defendants which result in the consent decree of February 27, 1920, were based upon alleged violations of the anti-trust laws of the United States, and to prevent future violations thereof, and that the allegations of the petitions herein clearly indicate that the petitioners desire both to modify the decree so as to continue the operations prohibited by the decree and also to extend their operations from meat food products into other unrelated lines and to

enlarge and increase the monopoly prohibited by the terms [fol. 404-838] of the consent decree and in violation of Sections 2 and 4 of the Act of July 7, 1890, and statutes supplementary thereto.

"5. On all of the grounds mentioned in the actions to dismiss the petitions herein made by the intervener, National Wholesale Grocers Association."

[fol. 839] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

Equity. No. 37623

UNITED STATES OF AMERICA, Plaintiff,

v.

SWIFT & COMPANY et al., Defendants

Statement of Evidence

In the trial of the above entitled cause, upon the amended petitions of the Armour and Swift groups of defendants for modification of the consent decree herein entered February 27, 1920, and answers to said petitions, which trial was had, beginning October 6, 1931, before the Honorable Jennings Bailey, one of the Justices of this Court, sitting in equity without a jury, the evidence taken, so far as the same is pertinent to the issues presented upon an appeal herein now pending to the Supreme Court of the United States, was in substance as follows:

During the course of the opening statement on behalf of the appellant, government counsel made the following statement to the Court:

Mr. Teegarden: If the Court please, introductorily, at least, the position of the Government at this stage of this long litigation cannot be better expressed than in the words [fol. 840] of the Attorney General himself in a letter which he addressed to the President of the Senate under date of July 11, 1930.

I shall read a short extract or two from that letter:

"With respect to the attitude of this Department toward the petitions of Armour & Company and Swift & Company for modification of the Consent Decree, I have declined to entertain any suggestion that I stipulate for any modifi-

cation of this decree. I have taken the position that the decree, although entered by stipulation and consent, is a judicial decree to be dealt with as such; that either by virtue of the clause at the foot of the decree reserving jurisdiction, or by virtue of general equity powers, or both, the Court has jurisdiction to entertain a petition for modification on a proper showing; that because of the importance of the matter involved and the conflicting interests, the matter should be fully heard on the merits by the court, and no modification of the decree made unless on such a judicial hearing and without any stipulation by, or consent from, the United States the evidence presented justifies, upon application of accepted principles of law and equity, some modification."

With reference to the procedural policy of the Government in this trial, the Attorney General further says:

"It is my intention to present to the court every justifiable argument and fact which tends to the conclusion that the decree should not be modified. I have no doubt that those who are interested in obtaining modification will present to the court all the evidence and arguments which tend to support their position; and in this way it is believed the facts relevant to the determination of this important matter can most clearly and expeditiously be presented to the court."

The Court thereafter referred to the above quoted statement of the Attorney General and the following occurred:

273-74* "The Court: Mr. Teegarden, yesterday you read from a letter of the Attorney General which is to be found in the record on page 69. I want to be sure that it is properly set forth in the record."

"Mr. Teegarden: Suppose, if the Court please, I bring the Court a mimeographed copy of the letter."

"Mr. Hogan: May we stipulate that Mr. Teegarden will furnish the Court with a copy of the Attorney General's [fol. 841] communication in full and the Court may consider that as the communication that was made a part of the record?"

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*Marginal numbers refer to pages in stenographic transcript of testimony

"The Court: I think I understand fully the Government's position, and as I read this, it concedes that the Court has jurisdiction, upon a proper showing, to modify the decree."

"Mr. Teegarden: That is our very frank position, your Honor."

The following evidence was received in behalf of the petitioning defendants:

(1) JOHN F. DALY, Assistant Chief Statistician, Division of Manufactures, United States Bureau of the Census, Department of Commerce, gave testimony as follows:

87-90 The Division of Manufactures compiles and publishes biennially statistics relating to manufacturing establishments throughout the United States, having products of $5,000 or more, value at the factory. This has been done quinten-ially from 1905 to 1919, and bien-ially since 1921. The report for 1927 is the last available, that for 1929 being now in process of completion.

92-96 Petitioners' Exhibit 1 is a summary of such information by industry groups and industries, and pages 11 to 13 show it for the group comprising food and kindred products. The figures here tabulated are explained in the introductory pages.

They show a total of 49,787 establishments for
108 1927 (which are merely separate plants, not separately owned concerns) in this group, with a total product valued at $11,015,860,000. Of these, 11,774 establishments manufacture edible animal products with a total product of $4,563,036,000, and 38,013 manufacture vegetable products and beverages with a total product valued at $6,452,824,000.

Petitioners' Exhibit No. 1 does not include any figures relating to farm products sold in the condition
90 [fol. 842] grown and not subjected to manufacture. The figures relating to the value of products represent selling value at the factory. (Petitioners' Exhibit 1, p. 4.)

97-102 Petitioners' Exhibit 2 contains a detail of the information summarized in Exhibit 1 with reference to the slaughtering and meat packing and related industries, and its figures are also explained in the opening

pages. On pages 6 and 13 it summarizes such information as follows:

Table 1.—Summary for the United States 1919 to 1927 (Data for Establishments with Products under $5,000 in Value Included for 1919, but not for Subsequent Years)

Year or period	Number of establishments	Cost of materials, supplies, fuel, and power	Value of products
1927	1,250	$2,663,740,403	$3,057,215,718
1925	1,269	2,625,192,435	3,050,286,291
1923	1,397	2,176,010,241	2,585,804,140
1921	1,184	1,868,198,302	2,200,942,072
1919	1,304	3,782,929,533	4,246,290,614

Table 6.—Animals Slaughtered—Number, by Kind, for the United States, 1919 to 1927

Kind	1927	1925	1923	1921	1919
Beeves	10,724,823	10,853,921	10,178,496	8,263,575	10,818,511
Calves	5,476,707	5,775,640	5,100,012	4,314,850	4,395,675
Sheep and Lambs	14,388,643	13,616,405	13,193,856	14,767,770	13,497,300
Hogs	47,492,302	48,072,511	57,018,292	40,726,780	44,520,726

The census statistics relating to slaughtering and meat packing shown in Petitioners' Exhibit 2 do not include any figures with reference to the slaughter of animals on farms and ranches or any figures as to slaughtering and meat packing establishments whose products has a value of less than $5,000 per year at the factory, or any figures of establishments slaughtering exclusively for the retail trade, or any figures of establishments engaged exclusively or principally in the manufacture of sausage or sausage casings. (Petitioners' Exhibit 2.)

[fol. 843] Petitioners Exhibit 3 is a statement of
102-03 meat packing schedules, according to value, 1927, specially compiled in the Bureau, showing by states and total for the United States the number of plants having total products in the five value classes there shown, e.g., of the total of 1,250 plants, 64 have total products ranging from $5,000 to $20,000; 267 from $20,000 to $100,000; 429 from $100,000 to $500,000; 163 from $500,000 to $1,000,000; and 327 with total products of $1,000,000 or more.

Petitioners' Exhibit 3 also shows the distribution of slaughtering and meat packing establishments by states and discloses that there are such establishments in every state of the United States with the exception of Vermont, and that the number of such establishments ranges from

one in the state of New Mexico to 152 in the state of Pennsylvania. (Petitioners' Exhibit 3.)

Petitioners' Exhibit 4 also compiled in our Bureau shows the 1921 and 1927 slaughtering and meat packing establishments classified as follows according to the value of products per year:

Production	1921	1927
$5,000 to $20,000	142	64
$20,000 to $100,000	304	267
$100,000 to $500,000	360	429
$500,000 to $1,000,000	112	163
$1,000,000 and over	266	327
	1,184	1,250

(Petitioner's Exhibit 4.)

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(2) CLARENCE E. BATSCHELET, Geographer in the
114 Bureau of Census, gave testimony as follows:

115, 119 Petitioners' Exhibit 5 is a map showing geographical location and distribution throughout the states of the United States of the 1,250 meat packing establishments as shown in Petitioners' Exhibits 2 and 3. Small dots represent each one plant, while large dots indicate cities having more than 10 plants, the number of plants so located being in each case shown in parentheses at the side.

[fol. 844] Petitioners' Exhibit 5 shows that in the year 1927 there were 21 slaughtering and meat packing establishments at San Francisco; 11 at Denver; 11 at Omaha; 11 at Kansas City; 29 at St. Louis; 57 at Chicago; 12 at Indianapolis; 11 at Louisville; 36 at Cincinnati; 21 at Detroit; 21 at Cleveland; 20 at Pittsburgh; 29 at Buffalo; 34 at Baltimore; 34 at Philadelphia; 18 at Brooklyn; 40 at New York and 16 at Boston.

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121 (3) CHARLES A. BURMEISTER, Senior Agricultural Economist in the Livestock, Meats, and Wool Division of the Bureau of Agricultural Economics, Department of *Commerce*, gave testimony as follows:

123 The Bureau of Agricultural Economics collects and disseminates agricultural information regarding the production of agricultural products, market prices, and various kinds of statistical data relating to production and marketing of agricultural products.

123-129 Petitioners' Exhibit 6 is a map showing the locations throughout the United States of stations maintained by the Bureau, number of personnel there employed, leased telegraph lines, and other communication services maintained by the Bureau.

Petitioners' Exhibit 6 shows that the Bureau of Agricultural Economics on January 1, 1930, had 2,403 employees, of which 1,029 were located in Washington and 1,374 in the field outside of Washington; that the Bureau operates 10,579 miles of leased telegraph wires and employs 70 telegraph operators at 48 separate offices.

129-132 Petitioners' Exhibit 7, "Statistics of Meat Production, Consumption, and Foreign Trade in the United States, 1900 and 1929," is an official publication released by the Bureau in April, 1930.

145 The figures therein relating to livestock slaughtered under federal inspection are furnished by the Bureau of Animal Industry, and are compiled from the reports of its official inspectors stationed in slaughtering [fol. 845] plants subject to the Meat Inspection Act of June 30, 1906. The figures relating to total slaughter, as well as those relating to exports, imports, and consumption of meats and meat products represent estimates by the Bureau, on the basis of information available, as explained on pages 1 and 2 of this Exhibit.

Petitioners' Exhibit 7 also shows the relation between Federal inspected slaughter and total slaughter in the United States by years from 1920 to 1929, and discloses that during the year 1929 the following relation existed between Federal inspected slaughter and total slaughter:

Livestock	Federal inspected	Total
Cattle	8,324,000	12,241,000
Calves	4,489,000	8,313,000
Sheep & Lambs	14,023,000	18,048,000
Swine	48,445,000	74,945,000

Petitioners' Exhibit 7 further shows that the export of all meats, excluding lard, from the United States decreased

from 2,169,000,000 pounds in 1919 to 1,089,000,000 pounds in 1920, 775,000,000 pounds in 1922, 592,000,000 pounds in 1925 and to 407,000,000 pounds in 1929. Petitioners' Exhibit 7 also shows that the per capita consumption of beef in the United States has decreased from 63.1 pounds in 1920 to 51.4 pounds in 1929; that the per capita consumption of pork, excluding lard, was 60.5 pounds in 1920 and 72.8 pounds in 1929.

152-154 Petitioners' Exhibits 8 and 9 are report forms used in the Bureau of Animal Industry in gathering and reporting information as to livestock slaughtered under federal inspection.

133, 165-196 Petitioners' Exhibit 10 shows a comparison for the years 1920 to 1929 of livestock slaughtered and meat and lard produced therefrom by the four leading meat packing concerns and their respective subsidiaries, as compared with the estimated totals.

222 [fol. 846] These totals are the same as those included for the same years in Petitioners' Exhibit 7, and from the same sources, while the totals for the four packer groups are based upon figures gathered by the Bureau of Animal Industry from federal inspection, as above explained. The figures as to Armour & Company include the business of Morris & Company, both prior and subsequent to the merger of those two interests in 1923.

172 The market news service with regard to the live stock industry comprises market information on the supplies and prices of live stock and supplies and prices of meats, also wool. This information is collected during all hours of trading at the various markets and is disseminated as rapidly as it can be obtained; that is, as fast as a reporter obtains information regarding market conditions and prices, he prepares a brief report which is made available to the public as quickly as possible by all modern means of news dissemination. At Chicago, which is the world's largest live stock market, one of our men reports for duty at 4 o'clock in the morning and his duties are to get in touch with railroad officials of the railroads bringing live stock into Chicago and in collecting them he

173 obtains information as to the number of cars of live stock that have arrived or are due to arrive since the closing hour of the preceding day; that is, 3 o'clock; that is, those that have arrived and those that will arrive

up to 3 o'clock of the current day. He gets information from them as to these prospective arrivals and from the information he has as to probable receipts by truck and other information, he estimates the probable daily receipts of each kind of live stock that will arrive at that market. He starts at 4 o'clock and releases the information at 6 o'clock by telegraph over our leased wire telegraph system to all of our other offices and it is posted on the blackboard of the exchange at each market; that is, the building in which the various agencies operating on the market have [fol. 847] their offices. This information is also posted on boards out in the yards for the benefit of traders who do not have time to go into the exchange building, and it is sent by commercial telegraph to those people who
174 subscribe to the service rendered by the telegraph companies. It is also broadcast by radio but not at 6 o'clock in the morning, a little later in the day. That is done by various broadcasting stations. At six of our markets, or at six of the stations where we have representatives, our own men do the broadcasting from remote control microphones stationed in their offices or in the exchange building where their offices are located.

176 At 7 o'clock in the morning, if the man who made the estimates of receipts gets additional information which necessitates revising the estimate that was released at 6 o'clock, he sends out a revised estimate.

At most of these markets, trading begins at 8 o'clock in the morning and as soon as enough sales have been made or enough activity has been indicated as to how the trading will be conducted, our market reporter who is reporting the hog market will prepare what we call a hog market flash. This is put on the wire at 8:30, the first one, or around 8:15 or 8:30, and then the second hog flash which gives
177 further details regarding the development of trading in the hog yards is compiled at 9:15. About that time, 9:15, there is a first flash on the cattle market and also on the sheep market giving opening trading, whether trading is active or slow, whether the prices are higher or lower than the previous day. At 10:30 a report is filed on the wire giving detailed quotations, bid or offered, in all the different branches of the live stock market; that
178 is, on cattle, hogs and sheep. I mean by this prices showing actual sales. The first report of detailed

quotations by classes and grades, different weight groups, is filed around 10:30 at Chicago, and at 11 o'clock at the [fol. 848] other markets like East St. Louis, Kansas City, Omaha and St. Paul.

At 11 o'clock at Chicago, we send out a report of
179 the estimated receipts to arrive the following day.

That is really an intention report; that is, farmers or shippers intend to load so many carloads of live stock for tomorrow's market and the purpose of this report is to let them know what the condition is so that they can govern their shipments and hold them back or send them forward according to whether the market is favorable or not. Around one or one-thirty the closing reports are prepared. This gives the prices that prevail, the range of prices on each segregation that we make either by grade or by weight, the prices that were paid during the day and if there have been any changes in trading since 10:30
180 when the first report of that kind was filed, that will be shown on this report which is sent out around 1:30 or 2 o'clock. This price information is published with regard to all the various classes and grades and weight groups of live stock that are sold on the particular market from which the report is issued or sent out.

After the close of the market the reporters pre-
181 pare a detailed report describing what occurred during the day at their particular market and this report is mimeographed and sent out by mail to those who desire to receive it. An abbreviated detailed report is furnished the various newspaper associations that send out information to the different papers throughout the country. These reports are furnished to the public free of charge and last year we sent out from all offices, all told, about 5,000,000 mimeographed reports.

The first use of radio for disseminating market
182 news was made in December 1920, when three stations did some experimental work in sending out market reports using the radio telegraph; that is, a code [fol. 849] system of transmission. Then in 1921, or beginning in 1921 with the development of the radio, ex-
183 periments were made in broadcasting radio reports.

From these three stations in 1921, the number increased to 65 in 1922, 85 in 1923, and 92 in 1924. From 1924 to 1928, the growth was much slower, during the last

year having 106 stations and in 1929, 110 stations.
185 Petitioners' Exhibit 11 is a document of 56 pages issued by the United States Department of Agriculture, containing the crop and market news radio broadcasting schedule of the Bureau of Agricultural Economics for the year 1929. In the introductory statement to this exhibit, the following statement is made:

A few of the reasons behind this extensive service of broadcasting crop and market reports are: (1) radio gets the reports to those who want it while the information still has market value. (2) Radio puts the information into the hands of the farmer in his home no matter how isolated he may be. (3) Radio has placed producers on an even trading basis with buyers.

Ninety of the 110 radio broadcasting stations used by the Department broadcast information on live stock.
186 The broadcasting is done at a regular hour each day, and, of course, the radio listener gets that either by his experience in tuning in or from the schedules that are published in his local paper. The Department has two kinds of market reports on meats; one is a monthly report on the amount of meat in storage and the other is daily reports of trading and prices, and then a weekly review of what occurred in the market during the week, the weekly review being published at the end of the week in mimeograph form. These reports are sent out to the people who request them. The Bureau compiles a report once a
187 month showing the quantities of frozen beef, pork, lambs and mutton, dry salt pork, pickled pork and lard in storage, held in warehouses owned by packers and in the public storages.
[fol. 850] In addition to publishing the current facts each day or week, the Bureau disseminates information of an analytical or interpretative nature; that is, there are employees who are trained in economic analysis who analyse all these facts and endeavor to interpret them as to what they mean with respect to the position of the industry and the probable developments that will occur as a result of the existing conditions. This information consists
188 of price situation reports, monthly analysis of market conditions, an analysis of all facts regarding the current and potential supplies, price movements, and exist-

ing and probable demands for meats and for these various products on which the Bureau reports prices. The Bureau makes what is called a pig survey twice a year, in June and in December, in which it arrives at an estimate as to the probable decrease or increase in the number of pigs raised as compared with the previous year. The information is obtained through the cooperation of the Post Office Department by sending out postcards through the rural mail carriers. Each rural mail carrier is supposed to deliver ten of these cards on which there are questions regarding the number of pigs raised, or rather the number of sows that farrowed and the number of pigs raised and saved. The mail carrier is supposed to deliver these cards at random to farmers living on his route and he collects the cards and they are sent into the field offices of the Bureau. Tabulations are made and from the statistics that are obtained the Bureau is able to make estimates as to the increase or decrease in the number of pigs saved. We compile
189 information relative to the lamb crop once a year, and compile and make estimates as to the number of cattle on feed at different times of the year and the number of sheep and lambs on feed. These are compiled at periodic intervals at a time when the information is believed to be most useful to the live stock producer. Infor-
[fol. 851] mation is also collected and disseminated on fruits and vegetables and grains and dairy products, eggs and poultry.

The first appropriation made for live stock news
190 service was $65,000, which was appropriated in 1916. The expense of the news service in 1920 was $151,581 and $468,800 in 1930. During the last ten years there has been an increase in the use of the leased telegraph
191 wire and the number of news reports sent out have increased very materially.

Regarding the daily supplies of fresh meat in the large centers like New York City, we obtain reports as to the carloads of meat that come into that city from other points. This information is obtained from receivers of those meats, large meat distributors, and then we have information as to the slaughter in the city which information is filed or obtained from the Federal Meat Inspection Service. We have men going into what are called the coolers of the meat sellers in the various cities. That is done in the centers

where we maintain the market reporting service, namely, Boston, New York, Philadelphia, Chicago and San Francisco.

Petitioners' Exhibit 12 is a specimen copy of the mimeographed daily report released by the Department from Bos-
ton, New York, Philadelphia and Chicago regarding
195 live stock and wholesale meat.

An order buyer as commonly referred to at a public market is an individual who acts as an agent for some concern that desires to buy live stock. For instance, a packer in the East, or a slaughterer in the East, operating a packing plant at Philadelphia purchases supplies at St. Louis or Chicago. He does not have his own employee at that market, but he instructs a man who is in the business of buying live stock for other people and gives him an order to buy certain kind of live stock and informs him as to the price he expects to pay. In other words, he is an agent for someone else who wishes to buy live stock. The commis-
[fol. 852] sion man, the man who represents the seller, is engaged in selling live stock for shippers who consign live stock to the market. Other sellers are speculators who buy live stock or who engaged in trading in live stock; that is, they have bought live stock from one individual and are endeavoring to sell it to someone else. A packer buyer is usually employed on a salary by the packer. The order
buyer usually operates on a commission. There is,
197 also, of course, a trader who is on the buying side.

Then there are commission men who buy for customers in the country. Stockers and feeders are animals bought for shipping back to the country for further grazing or finishing, and a commission firm may have an order from a farmer who desires to buy a carload of cattle for feeding and he is then on the buying side of the market.

Petitioners' Exhibit 14 is a mimeographed copy of the Bureau's wholesale meat report and live stock report on the Chicago market for September 2, 1930.

Petitioners' Exhibit 15 is a mimeographed copy of the Bureau's weekly review of meat trade conditions at Chicago and New York.

Petitioners' Exhibit 16 is a mimeographed copy of the Bureau's monthly report dated August 1, 1930 relating to cold storage holdings of fresh and cured meats. This re-

port informs those who are buying and selling these
199 products as to the supplies of these products that are available on that date, indicates whether the supplies are large or small as compared with previous periods and on the basis of that information buyers and sellers can formulate an idea as to what price they should pay or receive for these products.

Petitioners' Exhibit 17 is a mimeographed copy of the Bureau's Bulletin for August 1, 1930 showing stocks of meats in cold storage and in meat packing establishments [fol. 853] at Chicago, Boston, New York and Philadelphia.

Petitioners' Exhibit 18 is a mimeographed copy of Bureau's Bulletin for July, 1930 showing the average wholesale prices of fresh and cured pork products and lard at Chicago and New York.

Petitioners' Exhibit 19 is a mimeographed copy of the Bureau's report for July 1930 showing receipts and disposition of live stock at 65 public markets.

Petitioners' Exhibit 20 is a mimeographed copy of the Bureau's report showing animals slaughtered under Federal meat inspection during the fiscal year ended June 30, 1930.

Petitioners' Exhibits 22 to 27, inclusive, all dated September 2, 1930, are copies of Bureau's radio releases for that date showing the time of releases and the character of information disseminated by the radio regarding live stock receipts and prices at public markets.

208 The Bureau also prepares special reports for the various press associations that serve the newspapers, like the Associated Press, the International News Service and the United News Service.

210 There is considerable live stock sold direct from the producer to the slaughterer at points other than public stock yards and that is commonly designated as direct selling or direct buying. We opened an office in Des Moines, Iowa, which was put into operation last month, the second of September, I believe, in which information is collected from packers who are operating in that state; that is, in the state of Iowa and southern Minnesota, who are buying hogs direct from farmers rather than on public stock yards. We are collecting information as to supplies and as to prices being paid and disseminating that from our Des Moines office. The direct buying of live stock has

[fol. 854] grown very materially in recent years, particularly in the case of hogs. There has not been much change in regard to cattle or sheep.

The telephone is used very extensively by people who have telephone connections with our branch offices. Particularly in a market for instance, like Chicago, we
211 get numberous telephone calls all during the day's trading. At Chicago, for instance, we have 10 trunk lines coming into our switchboard. Around the opening of the market, during the first hour of trading, there will be numerous calls coming in. Most of those calls, practically all of those calls, are requests for information as to receipts and how the market is opening. So the girl, instead of asking them what they want or whom they would like to speak with, just calls out what the information is that has been supplied here. For instance, she will tell what the receipts are, without any request.

213 There have been no changes in news dissemination methods other than the radio since 1920, other than that the service has been greatly expanded by opening a number of new offices that were not operated at that time, covering more markets, expanding the type of service, giving more information of certain kinds, giving more detailed information, regarding classes and grades and weights. The scope of our service has been limited entirely by the appropriations available for carrying it on.

215 About the only private service is some of the markets where local newspapers will have reporters who come out and get their information. But they get most of that information from our men rather than going out into the yards and getting it themselves. At some of the markets there are live stock market papers and the reporters for those papers usually visit our office and confer with our representatives before they go back to their offices to write their news stories. In fact, one of these men [fol. 855] has a desk at one of our offices where he comes and sits and gets the information.

218 We have two representatives at our Des Moines office. These buying points are scattered out all over the state. There are 28 concentration points—26 or 28 concentration points in the state. Our men have gone around and interviewed these buyers. There are certain organized selling agencies in the state also. We have made

arrangements with those buyers and sells to report
219 to us every day by telegraph. One of these two representatives travels, makes a trip each week, going around visiting these fellows checking up. There are cooperative selling agencies operating in Iowa. They sell the hogs for the farmers through these cooperative agencies.

235 I have an idea as to the ratio between private buying and buying on the public stock yards. I have checked this in the last two days. It is approximately 40 per cent hogs last year were bought direct.

236 If the packers were in control of the stock yards they would not also be in control of the sources of information concerning the prices on which they relied or on which the Government relied.

236-242 [fol. 856] (4) MORSE SALISBURY, Chief of the Radio Service in the United States Department of Agriculture, testified as to the nature of departmental broadcasting programs, in which information arising from the Department's investigations is disseminated to the general public. Petitioners' Exhibits 28, 29 and 30 furnish illustrative examples of the programs so broadcast.

242 The information thus disseminated relates to agricultural topics, market conditions and outlook and was inaugurated experimentally on October 2, 1928,
239 through a network of 17 middle western and southwestern stations. There is a distinction between this type of broadcasting and the type described by the previous witness, Mr. Burmeister. The type that he described is daily quotations and statistics of market supplies chiefly. This type of information that we put on the network to go all over over the country from Washington is what might be called situation and outlook information. Those are technical economist's terms 'situation' applying to a description of the factors underlying a particular status of the market at any particular time; 'outlook' pertaining to factors which may influence the markets in future, which may have
237 any effect upon prices. The broadcasting is now
239-40 done through 38 radio stations and approximately five million radio receiving sets are within the range of these stations.

(5) WILLIAM L. AUSTIN, Chief Statistician for Agriculture in the Bureau of Census, Department of Commerce, testified:

The government has taken a census of agriculture every 10 years since 1840, and every five years since 1925. Petitioners' Exhibit 31 contains summarized statistics, by states, gathered from this census for the year 1925, and pages 3, and 6-13, show tabulations of farms and farm property for the years 1910, 1920, and 1925. This shows [fol. 857] 6,448,343 farms in the United States in 1920; and 6,371,640 in 1925. Of the latter figure, 2,462,608 were operated by tenants, and 40,700 by employed managers.

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247 (6) DR. O. C. STINE, Agricultural Economist in Charge of the Division of Statistical and Historical Research, Bureau of Agricultural Economics, Department of *Commerce,* testified:

My Bureau collects and publishes for the public under the title, "Crops and Markets," estimates of production of agricultural food products in the United States, based on the five and 10 year censuses, and annual reports from farmers as to their production of crops and livestock. Petitioners' Exhibit 32 (offered only as to pp. 350, 351, and 373) is an example of this publication for the month of September, 1929. Page 373 in this issue shows estimated gross and cash income from farm production, 1924 to 1928, in dollar values. Gross value as here used represents total production multiplied by average prices per unit of the product at the farm. Gross income represents that part of the product sold or used on the farm, as food or clothing, multiplied by the average unit farm prices. Cash income covers only that part of the product which
335 is sold. Page 350 shows receipts and disposition of livestock for the month of August, 1928 and 1929, by livestock markets in the United States.

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252 (7) H. H. HULBERT, of the Division of Cooperative Marketing, in the Federal Farm Board, testified:

This Division was transferred from the Department of Agriculture to the Federal Farm Board by executive order

upon the latter's organization. This Division, both before and after that time, has gathered data with respect to co-
[fol. 858] operative farm organizations, their names, where they operate, and what they deal in. Petitioners' Exhibits 33 to 37, inclusive, are tabulations of quantities of live-stock by head and value handled by farmers' cooperative associations operating on terminal markets during the period of time therein indicated. These associations are composed of members who are producers and in addition to the products of such members can handle products for non-members up to 50% of their respective totals.

Petitioners' Exhibit 33 consists of a tabulation showing cattle handled by cooperative live stock terminal sales associations 1920 to 1929. It appears from this exhibit that in 1920 there were 3 such associations operating at 3 markets, Denver, Omaha and St. Joseph, and that their combined sales were 84,863 head of cattle, whereas in 1929 there were 28 such associations operating at 22 public markets with aggregate sales of 1,904,066 cattle.

Petitioners' Exhibit 34 relating to hogs handled by co-operative live stock terminal sales associations 1920 to 1929 shows that there were 3 such associations operating at 3 markets, Omaha, Denver and St. Joseph, in 1920 with sales of 536,380 hogs and that in 1929 there were 28 such associations operating at 22 public markets with sales of 8,054,186 hogs.

Petitioners' Exhibit 35 relating to sheep handled by co-operative live stock terminal sales associations shows that in 1920 there were 3 such associations operating at 3 public markets, Denver, Omaha and St. Joseph, with sales of 29,676 sheep and that in 1929 there were 28 such associations operating at 22 public markets with sales of 2,093,137 sheep.

Petitioners' Exhibit 36 shows that the dollar volume of sales of livestock by these cooperative live stock terminal sales associations increased from $37,419,935 in 1920 to $302,894,934 in 1929.

Petitioners' Exhibit 37 relating to live stock, sales and purchases by terminal market cooperative sales agencies
[fol. 859] at 22 markets during 1929 shows that in 1929 the cooperative selling of such agencies at the Chicago market aggregated $50,041,152, at East St. Louis $49,026,-612, at Indianapolis $22,302,234 and at St. Paul $52,464,012.

These co-operative agencies are selling agencies, and sell livestock for a commission like old line commission agencies, and occupy generally the same position as they in relation to buyers, in the assignment of pens by the stockyards companies or in any other favors which the stockyards have to bestow on persons using the yard facilities. However, most markets handle the apportionment of pens through a pen committee containing representatives of the livestock exchange as well as of the stockyards company.

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269 (8) HUTZEL METZGER, Assistant Chief of the Division of Cooperative Marketing, Federal Farm Board, testified:

Petitioners' Exhibit 38 is a tabulation of number of farmers' cooperative associations, their estimated membership, and volume of business, by commodity groups, for the years indicated, based on statistical data and other information gathered by this Division. Prior to 1920, the cooperative movement was largely in local associations handling a relatively small business. Then the drift toward terminal agencies set in, and there has been a rapid growth in volume of business handled since that time.

271 The big growth particularly in the live stock and dairy and poultry organizations has come since 1920.

272 For 1920, we would only have detailed information as to the actual number of cooperative associations, but we do have on certain types of associations, as, for example, the terminal market live stock agency, and so forth, the census figures in 1919, or the 1920 census. The volume of business handled, according to the census figures in 1919 was $806,599,000. Our figures show, in 1929, 1930, that two and a half billion dollars worth of business was handled by all of the cooperative associations of which we have a record.

[fol. 860] AGREEMENT RE USE OF MOODY'S MANUALS

279A-299 In lieu of stating the testimony of John Sherman Porter, Vice President of Moody's Investors' Service, and Editor-in-Chief of Moody's Manual, New York City; and Robert V. Fleming, President, Riggs

National Bank, Washington, D. C.; and William W. Spaid, member of W. B. Hibbs & Company, investment firm, Washington, D. C., it is conceded on behalf of the United States that Moody's Industrial Manuals for the years 1920 to 1930 were accepted as available for use and reference by any of the parties in the compilation of statistical material to be offered in evidence.

[fol. 861] (9) WILLIAM A. MOODY, President of the Moody Commission Company, National Stockyards, Illinois, testified:

299-335 This company is a livestock commission company on the National Stockyards, just outside East St. Louis, Illinois, and sells livestock shipped to us on consignment, for a commission. I have been in this business 31 years. East St. Louis is the fourth largest livestock market in the United States—Chicago, Kansas City, and Omaha being the three larger markets.

I am president of the St. Louis Livestock Exchange, and was president of the National Livestock Exchange about 20 years ago.

Buyers of livestock on the National Stockyards consist of (1) packer buyers, who are the employed buyers for packing houses located at that yard; (2) order buyers, who operate independently and buy to fill orders of packers located in other cities, usually in the East; and (3) traders or speculators, who buy on their own account, sort and shape the stock into better condition for sale, and aim to resell it at a profit—sometimes to packers, sometimes to farmers for fattening. One hundred eleven individual commission men operate on this yard in 41 separate concerns, and 75 individual order buyers in 25 separate concerns. Both Armour and Swift, and also the East Side Packing Company, buy and slaughter on this yard; several smaller packers located in St. Louis also buy there, but in comparatively small quantities. We have very active competition between buyers in the purchase of livestock both between these packers and between them and buyers for outside packers. To the extent of my observation, all of them are given the same opportunity on the market, both buyers and sellers, and there is no distinction whatever. The

Packers and Stockyards Administration of the United States Government has an office there, and the space and facilities afforded by the yard are ample. Commission rates [fol. 862] are fixed by the livestock exchange, subject to the supervision of the government, and we are registered under the Packers and Stockyards Act.

By consent of the stockyard company, pens on the yard are assigned to commission agencies by a pen committee appointed by the livestock exchange. I was a member of this committee for 10 or 15 years, and chairman for a while; but left it five or six years ago. This system of allocating pens is the same that has been in use for the past 15 years.

311 I sell live stock to buyers representing Armour and Swift and I sell to them in competition, one with the other. There is just as much competition between Armour and Swift as there is between order buyers and Swift, every day.

312 The volume of sales of my company in 1929 was some 3,000 or 3,500 cars.

321 The buyers who purchase stock for feeding and fattening against the future market are not termed order buyers. We term those firms traders, who hold the stock in the yards to go out to be fattened.

324 Most of the live stock purchased at the East St. Louis yards by order buyers is for slaughter. The bigger part of it is sent to some slaughtering house in the East. Of course, a man might have an order to ship cattle anywhere, to Ohio, or Pennsylvania or Maryland, and they might go on feed or anything. I would not say that purchases from another part of the country are frequently for the purpose of feeding, but that happens. The
325 big part of it goes to slaughterers. My judgment is that it would be at least 90% of it goes to slaugh-
326 terers from what we call order buyers. Traders and speculators usually take their stock to another part of the yard that we call the traders' division and it is subsequently sold for slaughter at that yard. Most of it is for resale, some of it in the yard.

332 It is not generally true, other things being equal, that the man who handles the most stock at the yard will be represented on the pen committee and other things being equal receive a preferment in the allotment of space.

[fol. 863] The smaller man is just as apt to have the best location as anybody else. That has been true ever
333 since I can remember. The East Side Packing Company is one of the big companies at East St. Louis. I think they buy about as much stuff as either Armour or Swift. They compare favorably with them. I do not know whether they buy quite as many or not but they are a big factor in the yard.

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336 (10) Dr. Frank W. Miller, Assistant Chief, Packers and Stockyards Division, Bureau of Animal Industry, Department of Agriculture, testified:

This Division has been functioning since about September, 1921, shortly after the approval of the Packers and Stockyards Act. I have been with it since November, 1921.
It has 20 field offices located at the more important
338 livestock market centers in the United States, with local livestock market supervisors, a staff of 20 or more accountants and auditors engaged in auditing and examining the books and records of persons subject to the Act. In addition to these and other usual clerical forces, we have a chief engineer and a staff of auditors engaged in the appraisal of stockyard properties; also an administrative staff in Washington, consisting of the Chief of Division, and under him a section in charge of trade practices, one concerned with audits and accounts, one handling registration and filing of tariffs of rates and charges, and one handling personnel matters. The valuation section is
339 under the chief valuation engineer, with headquarters at Kansas City, Missouri. We also have an engineer and two skilled experts looking after the inspection and testing of scales at stockyards, on which livestock is weighed.

340 Under the Act we require registration of all engaged in the business of buying and selling livestock on public stockyards, whether as commission men, traders, packer buyers, or others rendering miscellaneous
343 stockyard services. Petitioners' Exhibit 40 is the form used for this purpose.

[fol. 864] We exercise jurisdiction over all public stockyards over 20,000 square feet area, exclusive of passageways, and 72 such yards are now posted. We also require

bonds of market agencies, and Petitioners' Exhibit
343 41 is the form of bond required.

344 Petitioners' Exhibit 42 was prepared in the Packers & Stock Yards Division from its records of registration. It shows that the total number of market agencies registered as of June 30, 1930, was 1,302 consisting of the following classes:

344-5 and P. Ex. 42 Commission men of which there were a total of 823 handling various species of live stock, so-called order buyers which are market agencies as defined in the Act, of which there were 264 registered, handling various species, so-called clearing agencies which come under the classification of market agencies of which there were 44, and then the miscellaneous group of market agencies rendering various miscellaneous services not included in the other groups, of which there were 171, making the total, which I first gave, of 1,302.

345-6 and P. Ex. 42 Petitioners' Exhibit 42 also shows that on June 30, 1930, there were 3,159 dealers registered with the Packers and Stock Yards Administration. Included under dealers are buyers; that is to say, those who buy live stock only either on their own account or as an agent or employee, and of this class of dealers buyers only there were 2,061 registered. This group includes buyers employed by packers to buy live stock. The second classification is known as traders. Those are persons who buy and sell usually on their own account, often known as speculators, of which there were 896 registered. The third group is classified as buyers and traders. That takes in classes where they buy either on their own account or as an employee. We throw those together, to take care of classes that could not be placed accurately in the other two groups. Of this class there were 138 registered. There is a small miscellaneous group of dealers which could not be conveniently put in the other classifications of which there were 64 registered, making a total of 3,159 dealers registered. The total of all registrants shown by Petitioners' Exhibit 42 is 4,461.

[fol. 865] Petitioners' Exhibit 43 shows the number of market agencies and dealers registered under the Packers and Stock Yards Act on August 6, 1930, at particular markets, there being on that date at Chicago, Ill., 215 market agencies and 412 dealers, at Kansas City, Mo., 102 market

agencies and 270 dealers, at National Stock Yards, Ill., 108 market agencies and 143 dealers, at Omaha, Nebr., 95 market agencies and 176 dealers, at Sioux City, Iowa, 62 market agencies and 75 dealers, at South St. Joseph, Mo., 52 market agencies and 77 dealers and at South St. Paul, Minn., 74 market agencies and 114 dealers, or a total at 7 markets of 708 market agencies and 1,267 dealers.

364 Exhibit 44 is a list of stockyards over which the Department has taken jurisdiction under the Act, with their location, owner of the property, and the dates under which they were posted as subject to the Act. Petitioners' Exhibit 44 shows that the number of public stock yards registered under the Act has increased from 54 in 1921 to 72 in 1930, and that the 72 public markets existing in 1930 were located in 31 states and in the District of Co-

350-5 lumbia. We required all stockyards and market agencies to file with us schedules of rates and charges for services rendered and practices enforced, with notice as to any changes. These changes are also required to be posted on the yard and made available to the public to whom the services are rendered, or to any person interested in knowing them. If they are found unreasonable, the Secretary may upon complaint, or upon his own initiative, and full hearing, prohibit them and determine proper rates to be charged, and this was recently done relative to livestock commission rates on the Omaha Stockyards.

We are endeavoring to exercise all the powers and perform all the duties with which we are charged under the Act, as occasion arises.

355 As to our supervision of packers under the Act, all their employed buyers operating on public yards are required to register with us as dealers. The requirement of bond to cover their purchases is claimed, but is not now [fol. 866] being pushed, pending the decision of a case involving the validity of that requirement, now pending in the federal court at Chicago.

356-7 The packer buyer, of course, is subject to the same supervision, observation and practically daily contact by the Bureau's supervisors on the various stock yards, as are all other classes of buyers and registrants engaged in the business at the market. If there are any complaints regarding their methods of buying, regarding competition, regarding unfair tactics, brought to the attention of the

supervisor by the sellers on the market or by any producer or shipper, the action of these buyers is promptly investigated and all the facts obtained that can be obtained and reports made to the Bureau. The supervisors, of course, make frequent reports to the Bureau regarding all of their activities and are almost continually carrying on investigations, either by direction of the Bureau or on their own initiative, as the routine work develops matters that require investigation.

As to their meat packing establishments and sale of their products, we require the packers under Title II of the Act to furnish us with annual reports, which are largely
364 financial in character and of which Petitioners' Ex-
357 hibit 45 is a specimen form. We have received a considerable number of complaints, usually of an informal character, from packer competitors, sometimes from farmers and producers, with respect to their activities in the sale of meat and meat food products, or the purchase of butter, food, and creamery products in the case of packers hand-ing those commodities. We have conducted a considerable number of investigations in this field and also in the field of packer activities in the purchase of livestock other than on posted stockyards, such as country con-
359 centration and assembly points. We do not have men regularly stationed at these concentration or assembly points, but we regard the buying operations of the packer there as being subject to our jurisdiction, if there [fol. 867] is interstate commerce involved, and as I have said, we have made some rather extended investigations of the conditions under which the live stock at certain of these concentration or assembly points are handled and bought, the conditions under which competitive buying is carried out in the territory using a number of these concentration points. We do not have access to, or go over, packer
359 books as occasion requires, the work of our audit and accounts division relating principally to the investigation of rates and charges by the stockyards companies and market agencies. The Packers and Stock Yards
360 Administration does have access to the books and records of stock yards companies and commission firms in connection with an investigation into reasonableness of rates and charges. For example, if a stock yard company is concerned, very complete, detailed financial and

historical audits are made of the records and books of that company. The same thing is true with respect to making audits of the books and records of the commission firms or market agencies when the Secretary is engaged upon an inquiry as to the reasonableness of the rates and charges for buying and selling live stock on commission, and he is now and has been engaged upon such inquires at a number of the principal stock yards. The Secretary in a num-
361 ber of instances has exercised his authority to suspend the registration of market agencies and dealers for violation of provisions of the Act.

362 The work of our trade practice division is handled largely through our stockyard supervisors and special investigators, and concerns largely the handling of informal complaints as to practices of commission men, traders, or packers. A great part of the work of our supervisors has to do with continuous supervision, observation and investigation of the practices carried on by the persons engaged in the business from day to day as a general part of their routine duties.

364-7 Petitioners' Exhibit 46, prepared from material obtained in packer reports, show the financial results of operations of 832 packing concerns in 1929, report-
[fol. 868] ing to us under the Act, grouped as federally and non-federally inspected slaughterers, and non-slaughterers, Non-federally inspected slaughterers are concerns not subject to federal meat inspection, because their products do not move in interstate or foreign commerce, yet subject to the Packers and Stockyards Act because they purchase livestock on a public stockyard market. There are in each of these three groups additional concerns whose reports were received too late for tabulation or were too in-
376 complete for use, — altogether 136 such concerns in
393 addition to the 832, with a total volume of business of approximately $175,000,000.

367 Petitioners' Exhibit 47, also prepared from material obtained in packer reports, shows a comparison of financial operations of packers reporting to us under the Packers Act, 1925 to 1929.

368 Petitioners' Exhibit 48 shows a list of public stockyards reporting to the Bureau under the Act, their location, and the total receipts of livestock upon them

by species for the year 1929, as compiled from their reports for that year.

369 Our supervision of stockyards under the Act includes requiring them to file schedules of their rates and charges for services rendered their patrons, which include allocation of pen space, the furnishing of food and water to livestock, the use of scales and weighing facilities, chutes, and other physical facilities for loading and unloading, and on some yards other miscellaneous services, such as immunization of swine, dipping of cattle, and sheep, etc.

If schedules of rates and charges, when filed, are re-
370-5 garded as in any way improper, sometimes informal adjustments are made after conference with the stockyards; but if necessary, formal proceedings are instituted under the Act to determine the reasonableness of the rates filed, and if unreasonable, to prescribe those deemed proper. The stockyard owner is further re-
375 quired not to engage in any unjustly discriminatory practices, so that we exercise supervision over that to see that the stock yard company does not unjustly discriminate as between the various agencies at the stock yards in the allocation of space in which the agencies can handle and place the live stock they receive for sale on commission basis.

[fol. 869] We at times have complaints as to discrimination in the allocation of pen space, but have so far
375 been able to adjust them by informal methods. If such discrimination were found, we should feel warranted in proceeding against it as an unfair or unjustly discriminatory practice forbidden by the Act. The rates or charges for any services that fall within the provisions of the Act must be filed with the Secretary and posted on the yard. There is no difference in the character of
378 the supervision exercised at so-called packer owned and non-packer owned yards. The supervision is identical at all posted stockyards.

The Secretary does not claim any jurisdiction to regulate rates or prices as to meat packers under the Act. We
379 claim and exercise jurisdiction over them only with reference to restraints of trade, unfair practices, etc., under Title II of the Act, except as their buyers are regulated in their capacity as dealers, under Title III.

We claim and exercise jurisdiction over private yards and concentration points operated by packing con-
380 cerns for the receipt and purchase of livestock other than on public markets only so far as what goes on in those yards comes under Title II of the Act, that is, so far as they are the operations of a packer as such,
381 we do not reach them on those yards in their capacity as a buyer of livestock under Title III. An instance of such a yard is the Mistletoe Yard located adjacent to the plant of the Fowler Packing Company, in Kansas City, Kansas, which is a subsidiary of Armour & Company. Livestock, pricipally hogs, are received and physically handled there, similar to the handling given them on public yards, but no commission firms or
383 dealers are admitted to operate on this yard. The livestock is received from so-called "selected shippers" operating independently through the country, who buy it from the grower and ship it in on the understanding that it will be purchased at prices comparing with those paid for similar grades and quality on the public market at Kansas City on the same day. Others than these selected [fol. 870] shippers cannot ship to the yard. The Fowler Packing Company is the only buyer on this yard. There are several similar yards located elsewhere—two in
387 St. Louis, Missouri, one of which is adjacent to the St. Louis Dressed Beef Company, a subsidiary of Swift & Company; and another, to the St. Louis Independent Packing Company; one in Chicago adjacent to the Omaha Packing Company, a subsidiary of Swift & Company; one operated by the Cudahy Packing Company at Newport, Minnesota, across the river from South St. Paul; one by Hormel & Company, Austin, Minnesota; one by Wilson & Company at Albert Lea, Minnesota; and one by Martin Gregson, a subsidiary of Wilson & Company, at Nebraska City, Nebraska. There may be others that I do not now recall.

405 At yards of this type the Secretary of Agriculture decided in Docket No. 1 that they were yards owned by an individual company for the receipt there of livestock for its own use, and not a public market as defined in the Packers and Stockyards Act.

Our system requires the packers to report the total number of head of livestock purchased for slaughter,
390 but no separate report is made as to livestock purchased on these private yards. The stockyards re-
391 porting to us must furnish us with a list of their 15 principal stockholders; and in special audits, sometimes we obtain a complete list. While the Secretary
392 has sometimes disapproved decreases, he has, on the other hand, sometimes authorized increases beyond those claimed, where it was thought necessary in order to give a fair return upon the property invested.

394-5 The Secretary has never attempted to exercise any jurisdiction over meat packers in handling lines of business other than those which qualify them as packers under the Act, as, for instance, in handling canned fruits, vegetables, and other wholesale groceries. Nor do we attempt to exercise any supervision over packer use of refrigerator cars.

394 There has never been any determination made by the Solicitor for the Department of Agriculture as to whether or not the Packers and Stockyards Act gives the Secretary of Agriculture regulatory jurisdiction of the business of the packers other than that which qualifies [fol. 871] them as packers under the Act.

We have had no cause involving the regulation of the business of dealing in canned fruits or vegetables
402 by packers, and I do not know personally whether we have jurisdiction or not.

The Secretary of Agriculture handed down a decision in Docket No. 1 holding that the Mistletoe Yard at
405 Kansas City is not a public market, and, therefore, not subject to being posted as such. Morrell & Co. has a private stock yard at Ottumwa, Iowa, Kingan & Co. at Indianapolis, Rath Packing Co. at Waterloo, Iowa and Jacob Decker & Sons Co. at Mason City, Iowa.

The Secretary of Agriculture held in Docket No. 1 that he had jurisdiction over the activities of the Fowler
406 Packing Company, a subsidiary of Armour & Co., at the Mistletoe Yard under Title II of the Act and the Secretary exercised such jurisdiction. Any discriminatory practices such as are forbidden by Title II of the Act, which might be indulged in by a packer operating his pri-

vate yard, such as Mistletoe, is supervised and looked after and taken cognizance of by the Secretary of Agriculture.

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410 (11) CLIFFORD V. GREGORY, Editor-in-Chief of the Prairie Farmer, Chicago, Illinois, testified:

The Prairie Farmer, a weekly periodical, has a circulation of over 300,000, chiefly in Indiana, Illinois, and
411 Wisconsin. My editorship during the past 19 years has brought me into wide contact with individual farmers at farm meetings and otherwise throughout the country, and has given me occasion to study farm
412 problems extensively. The Prairie Farmer conducts a market news service embracing radio broadcasting.

The Prairie Farmer owns a controlling interest in
413 Radio Station WLS, which is operated primarily as an agricultural service station. We broadcast market [fol. 872] reports at very frequent intervals throughout the market day from the time the market opens until it closes. Live stock market reports are broadcast four times each day and six days in the week, and on Sunday at two different periods we broadcast the estimated receipts for the following morning.

416 One of the problems troublesome to the farmer lies in the spread between producers' prices and retail prices on the food commodities they raise. In my lines, this spread exists most largely in the retail branch of the trade. Retail prices in meats do not, in my opinion, respond as readily as they should to fluctuations in wholesale prices, and this seems particularly true with reference to movements of wholesale prices downwards. My
418 opinion on this subject is based upon price studies conducted since 1920 for a few days at a time on
420-1 an average of probably once a year. This data has been gathered from 15 or 20 retail shippers in Chicago, including 3 or 4 chain stores. These have been compared with wholesale meat prices for
422 similar times and territories, taken from the Bureau of Labor Statistics publications, and with livestock prices on the Chicago market also for the same times, secured from the Department of Agriculture.

425 There has been a more or less steady increase in this price spread since 1913, but the principal increase took place during the war and the one or two
424 years following. I think there has been some increase since 1920, but I cannot say whether these increases have been principally between livestock and wholesale prices or between wholesale and retail prices.

A retail dealer accounts for this increased spread
426 by increases in his costs all along the line.

I am not enough acquainted with the technical
428 phases of the business to be able to say how these apply. My knowledge has been gained chiefly as a consumer.

I think this difficulty as to price spread would be relieved if facilities used in handling meat could be used in
418 other food lines as well, and if meat packers could handle retailing of the meat products they produce.
[fol. 873] This would reduce costs through enabling the handling of meats and other lines in combination
427-8 stores, increasing the volume of business per store, and thereby leaving a lesser portion of the total cost to be charged up against meat. It would also enable cutting to be done at central plants, and the product
432 distributed in frozen packages through the use of a special freezing process now developed. This would eliminate the necessity of expert cutting at the retail meat store. I understand this freezing process requires colder temperatures and would involve certain changes in refrigeration equipment. Packer retailing is not necessary to effect the economies of the combination store; but if the packer handled retailing, he would, in my opinion, be more interested in moving his product promptly into retail markets at prices that would enable their prompt disposition, than is the average present-day retailer. This would aid in relieving so-called gluts on the market, which are very harmful, from the price standpoint, to the producer.

450 There is, in my opinion, a superfluity of retail outlets, and there should be a lesser number by increasing the business volume of those remaining.

456 Petitioners' Exhibit 49, being pages 10 and 11 of "Crops and Markets," for January, 1930, was admitted, showing receipts and disposition of livestock at public stockyards, in detail for 1928 and 1929.

457-9 Petitioners' Exhibits 50, 51, and 52 were received by agreement, being the annual reports for First National Stores, Inc., for 1928, 1929, and 1930, respectively. These were admitted in evidence only as to matters of fact therein stated, and to the exclusion of matters of opinion or prophecy.

Petitioners' Exhibits 50, 51 and 52 show that First National Stores, Inc. have four manufacturing and distributing plants located at Somerville, Mass., East Hartford, Conn., Bridgeport, Conn., and Providence, R. I., that the company operates its own bread and cake bakeries; that in 1929 and 1930 a new plant was constructed at Somerville designed chiefly for the handling of meats, fruits and vegetables and the manufacture of delicatessen and other meat products; that the company sells the output of the Bellows Falls Cooperative Creamery, Inc., the largest cooperative milk plant in New England.

[fol. 874] (12) EDWIN W. JAMES, Chief of the Division of Highway Transportation, Bureau of Public Roads,
459 Department of Agriculture, testified:

This Bureau has supervision of the construction of public roads with Federal aid, under the Federal Aid Highway Act, and incidental thereto conducts studies and investigations, and collects statistics, as to the management, operation, and use of highways, materials, their sources and use in road construction, etc.

462 Petitioners' Exhibit 53 shows rural road mileage in the United States, based on statistics gathered by the Bureau, from 1904 to 1930. The first column headed "Grand Total" represents all legal road mileage of public roads in the United States, regardless of type, and including roads laid out but not yet started. The columns
468 headed "Surfaced" include all roads on which any surface material has been placed, other than native soil. The columns headed "High Type" represent
463 roads so surfaced that they may be described as dustless and mudless. The figures under "State

Highways" and "Local Roads" represent the portions of all rural roads that are under those respective jurisdictions, and in each case the figures for "High Type" roads are included in those for "Surfaced Roads"; and the latter, in turn, in the totals in the preceding columns.

The percentages in the last six columns show the
469 percentages of the total roads of the variety shown at the head of each column that are either "Surfaced" or "High Type" as respectively indicated. This exhibit shows that surfaced roads in the United States have increased from 387,457 miles in 1921, to 662,435 miles in 1929; and that these "High Type" (including concrete, asphalt, macadam, etc) have increased from 36,038 miles in 1921, to 112,454 miles in 1929.

Petitioners' Exhibit 54, in 10 sheets, shows statistics gathered by our Bureau under authority of law relating to motor vehicles in the United States for the years 1921 to 1929, obtained from the registration officials of the various states. This shows an increase in the number of trucks and commercial cars from 979,904 in 1921, to 3,379,854 in 1929.

[fol. 875] (13) LEVON E. TRUESDELL, Chief Statistician for Population, Bureau of Census, Department of Commerce, testified:

472 Petitioners' Exhibit 55 is a preliminary announcement of population of the United States based on the 1930 census, and shows distribution of population between various United States possessions, various sections of the continental United States, and the states therein located; and a comparison of the figures for 1930 with corresponding figures for 1920. It shows that the population of continental United States increased from 105,710,620 in 1920 to 122,698,100 in 1930, or 16.1%.

Petitioners' Exhibit 56, being pages 16 and 20 of
474 pamphlet "Number and Distribution of Inhabitants," based upon the census of 1920, shows for that and certain previous years populations by geographical divisions and states, and for territories east and west of the Mississippi River. This shows in 1920 70% of the population living east, and 30% west of the Mississippi River.

(14) OSCAR G. MAYER, President of Oscar G. Mayer & Company, Chicago, Illinois, testified:

475 I have been with this company for 21 years, and was president of the Institute of American Meat Packers for four terms, from 1924 to 1928. This is a national trade association of the meat packing industry, with about 260 members, embracing among them about 95% of the total volume of business of the whole industry in the United States, both federally and non-federally inspected, i.e., about 95% of the total output of the 1,250 meat packing concerns shown in the census report. We have always prided ourselves that the meat industry has the
520 largest gross value product of any industry in the United States. For several years the automobile industry outstripped us, but since that we have again resumed first position. My concern deals principally
476 in pork products, and has plants in Chicago and Madison, Wisconsin. For our Chicago plant we buy livestock on the Chicago market, through a buyer employed by C. A. Burnette Company, an abattoir which does
480 all our slaughtering for us there. We also buy carcass cattle and beef cuts, and process them into merchantable forms.

[fol. 876] Packers who do processing must buy their carcasses principally from slaughtering packers, either
514 federally or non-federally inspected, in competition
515 with whom they, in turn, sell their finished products. Custom slaughtering is negligible in the industry.

477 For our Madison plant, where we do our own slaughtering, we buy principally locally, direct from the country, receiving it at our private yards in Madison; and the balance on the various western markets.

478 Petitioners' Exhibit 57 shows comparison of our volume of business, net worth, and profits for the years 1922 to 1928, in which time our sales have doubled. Petitioners' Exhibit 57 shows that in 1922 the sales of Oscar Mayer & Co., were $10,012,038 and its profits $133,713; and that in 1928 its sales were $21,630,513 and its profits $290,737; that in 1922 the company's return on net worth was 5.15 per cent and on sales 1.33 per cent and that in 1928 the company's return on net worth was 9.69 per

cent and on sales 1.35 per cent. We distribute our
476 product locally in Madison and Chicago as much as possible; then in Milwaukee; the East, and in export trade—largely English.

482 The conditions on the Chicago live stock market as well as all live stock markets are highly competitive. The buying potential in the Chicago market consists of the local packers in Chicago and practically every packer east of Chicago that might be in that market.

In buying in the vicinity of Madison, where we have
483 our private yard, we have the same degree of competition because of the fact that any man in our territory can ship his stuff into the Chicago market or the Milwaukee market, which is also a public market, or to Cudahy Bros., who operate a packing house on Lake Michigan right near Milwaukee, similar to ours, but larger. In other words, the transportation facilities surrounding Madison are such that any man, any farmer, can ship his hogs to any one of these four points and make that market the following morning; by the four points I mean our own packing house and the other three I have mentioned.

482 Both in our purchases of livestock and raw meat products and in our sale of the products we mer-
[fol. 877] chandise, we encounter the keen and active competition of Swift, Armour, Cudahy, Wilson, and
482 other meat packers, both federally and non-federally inspected. Competition has grown constantly
513 keener in the packing industry from year to year.

When I say that competition is keener, I mean there is more interest shown in the development of new products and better products, that there is better publicity and a keener desire on the part of the packers to follow their manufactured products into public consump-
485 tion.

There has been a very great increase in the use of motor trucks for delivery in my business in the last five, six, or seven years. A great portion of the business that used to go by local freight is now being shipped by motor truck. Distribution by peddler cars was probably
528 the most prevalent source of distribution until the motor truck gradually cut in on that. Of course there is still peddler car distribution within a radius of 75 miles, but I think it is diminishing.

Non-federally inspected products can be sold
487-8 only locally, and not in interstate commerce; but
their competition is generally more severe than federally inspected products because their freedom from the requirements necessary to meet the standards of federal inspection often permits them to operate at lower
costs. According to my observation, there is no dif-
489 ference whatever as to the character of the services
rendered or in the competitive conditions existing and the supervision of packer owned yards and non-packer owned yards.

Up to a radius of 75 to 100 miles from our
484,503 plants we distribute our products mostly by auto
trucks, where prior to development of truck transportation, refrigerator route cars or package freight would have been necessary. Within this area, truck transportation is cheaper on less-than-carload shipments, because we save the cost of initial hauling to the freight station and drayage at destination. Truck hauling itself costs about the same as LCL railroad rates, and enables the use of a collapsible returnable package, which is also a saving; and enables us to give a higher type of personal service to our customers. Where we can ship in carload quantities, as to Milwaukee, and to points beyond the 100-mile radius, [fol. 878] rail shipments are cheaper. For these, we use
leased refrigerator cars as much as possible, and
485 railroad equipment for the remainder. The former
we lease for a term of years at $45 per month, and
collect from the railroad company mileage on the
506 distance traveled at two cents a mile. We have no
difficulty in getting all the cars we need. In order
518 fully to compete with the large packers at the various small towns which they serve, it would be necessary for us to use peddler cars. There are certain economies in connection with peddler cars that you cannot get from plain L.C.L. shipment, but there is nothing to prevent
me from doing it.

489 In my judgment, there is no monopoly, either in
livestock or in the dressed or cured meat products from them, in the United States—nor can there be, because of the enormous amount of meat that is grown and its perishable character. Of the great number of farms in the United States, I know of no extensive control by meat pack-

ers, except that I understand Libby, McNeill &
518 Libby, a subsidiary of Swift, has plantations. Nor
490 do I know of any packer or small group of packers who control the supply of livestock, nor of any method whereby such control could be obtained. There are 20 to 50 packers operating in every market for meat products, and if any one of them should enchance the price unduly, it would soon be corrected by a large influx of meat from other packers. Similarly, the various livestock markets in the United States compete with each other, and if prices at any one of them fall below the general level, orders immediately flow in from the 50 or 100 packers, who receive constant information as to prices prevailing; and it
491 would soon be back in line.

492 There is a large number of local packers in every State in the United States. By local packers, I mean, of course, small slaughterers, but I also mean small processors of meat like small sausage makers, smokers and boilers of hams, etc., whose finished products compete with the finished products of all packers. There is a large amount of farm slaughtering, and we have to compete with that too. We operate but one retail meat market, principally for our employees, and have never felt inclined to go into the retail meat business commercially, because
495 to do so would be to compete with our own customers, and would alienate their patronage.

497 Less than 1% of our product goes to chain stores. [fol. 879] Their buying is sharp and keen, but we have never had any difficulty in dealing with them,
496 and their buying power is of no great importance in
498 our business. We give them lower prices than to
521 independent stores, as do packers generally, principally because of the quantity differential.

517 Independent retailers are, in my opinion, just as competent to dispose of meat products as the chain stores, as the incompetent independent tends to be eliminated.

510 Federal inspection of a packing plant requires certain structural standards, certain sanitation standards. It requires the branding of all products, the wrapping, the proper printing of all labels, etc., all of which

tends to add to the cost of the Federally inspected
511 products on the market. There is no inspection fee.
I would say that there is not nearly as much distinction between Federally inspected and non-Federally inspected products as there should be in the minds of the American Public. That is simply due to the fact that the American public has never been adequately impressed with that distinction. The non-inspected plants sell their products locally, but the local markets, of course, are very large in many localities in the United States.
521 Our business depends in substantial degree upon the number of independent retail meat merchants available for the sale of our products, and any substantial decrease in this number would seriously hamper our business. If, for instance, 30,000 out of 70,000 existing independent retail meat markets were to be taken over by the meat packers for the retail sale of their own products, it would be seriously disadvantageous to us, even though these packers should no longer compete with us in
523-4 our sales to the remainder, because it would diminish my clientele and narrow my market by that much.
527 There is no such thing as quantity discounts in the
528 purchase of livestock. The packer in a public market may buy considerable quantity, nevertheless, that quantity is bought from a large number of different individuals, no one of which would have enough to give a discount.
533 As to buying power, I think the buyer is practi-
[fol. 880] cally always in a stronger position than the seller, because of the large reserve supply of meat in the United States. The industry carries at the peak of its accummulation period, say late in April, as much as 750,000,000 pounds of meats in storage in coolers. The packers are always put to it to dispose of this supply.
531 A large number of packers, the large packers as well as a considerable number of the small packers, are capable of handling almost any sized chain store order that a chain store would offer to them. For example, if a chain store wanted to buy ten car loads of hams, I could sell them ten car loads of hams as well as Swift & Company. That is a large order—that would be an excessive order in fact, and I imagine is seldom placed.

534 A person who has a buying power of 5 per cent of the available supply of meat is in a very advantageous position. A man who has an available buying power has a definite advantage in the meat trade on account of the huge reserves and the willingness of the packing industry to sell its products at all times.

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536 (15) H. C. MERRITT, JR., The Tagus Ranch, California, testified:

I am vice-president and general manager of the Pacific States Corporation, which owns Tagus Ranch, a 7,500 acre fruit ranch 40 miles south of Fresno, devoted principally to the growing of peaches, prunes, nectarines, and
537 cotton. Our fruit crop is in excess of 30,000 tons annually. We do no canning ourselves, but sell to Libby, McNeill & Libby, California Packing Corporation, King County Packing Corporation, and California Co-operative Canners. In recent years, we have been afflicted with a tremendous overproduction, which necessitated throwing on the ground and allowing to rot the equivalent of 7,000,000 cases, out of a total crop of 20,000,000
540 cases fit for canning, grown in California, only 13,-
539 000,000 cases going into the industry. This discarding is handled by a committee organized by the industry, and the tonnage thrown on the ground is paid for [fol. 881] to the grower 45 days later. This overproduction is due to rapid planting some years ago, when there was a good consumption demand, planters ignoring the fact that the peak of orchard production is not reached for about seven years. We are in the midst of that peak now. No planting has been done in the past three years, and after 1932 production will start to fall off again; but in the meantime it is necessary to get additional
541 distribution, both domestic and foreign. If the packers could handle this distribution that would give us the equivalent of possibly several thousand additional wholesale grocers, with established branch houses, cars, warehousing facilities, and an organized sales force, which would lower distribution cost, so that half of the
542 savings could go to the farmers, and the other half to the public.

Due to these well financed distributing systems throughout the United States that now control their own
543 brands, such as Sprague-Warner and S. & W., I do not think it is possible to monopolize the fruit industry.

545 Packer distribution would throw an additional force of probably 2,500 salesmen into the field—not
544 that present distributing agencies do not reach sub-
546 stantially all of the United States, but that packer
545 distribution would reach new territories that are now covered by the wholesale grocers; and would create more competition in selling our products. If they offer them at a higher price, of course, they would
547 not get the trade; and if at a lower price, it would not brings us any more money. But the packer sales force would reach more retail customers and dealers,
547-8 and oftener; and by constant pushing and advertising would create an additional demand by persuading people to eat more fruit.

549 I understand from our traffic department that packers could handle these goods cheaper, because with their regular car routes they could ship them at freight rates to small grocers who now often have to have things sent in at high express rates.

554 Peaches differ from cotton, grain, or wheat, in [fol. 882] that crops in the latter class can be regulated from year to year, but once a peach orchard is planted it keeps on producing.

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556 (16) FRANK A. HUNTER, President of the East Side Packing Company, East St. Louis, Illinois, testified:

I have been President of this concern for eight and one-half years; and for 23 years prior thereto was with Swift & Company in various capacities from minor clerk to General Manager of the East St. Louis plant.

The business of the East Side Packing Company has grown from $3,500,000 in 1920 to $22,000,000 in 1929. In annual kill it has grown from 10,000 to 90,000 cattle and from 100,000 to 450,000 hogs.

561 Last year we earned 10½% on invested capital, and our profits since 1920 have increased by about
605 $175,000. We operate no branch houses, but about 22 peddler car routes, the longest of which is 600 miles, making two stops.

561 We operate our peddler cars in Missouri, Arkansas, Illinois, Kentucky, Tennessee, Mississippi, North and South Carolina and one or two into Pennsylvania. We have a salaried selling arrangement in New York City and sell on commission or brokerage in Philadelphia, Boston, Seattle, Richmond, San Francisco and Los Angeles. The greatest number of stops on a single route is possibly ten or twelve. We use 200 leased refrigerator cars, and
562 get additional ones as needed from the railroads, and sometimes from Armour and Swift. We have no trouble in getting all we need.

602 We ship butter and cheese in these peddler cars, in addition to meat products. They are loaded at our plant, as distinguished from LCL shipments, which are loaded by the carrier at its station. Peddler cars are
603 subject to a minimum load, for which we must pay a certain specified rate whether loaded to that minimum or not. They run on schedule. The railroad
604 agent tends to their unloading, but they are never unloaded through the warehouses as dry freight usually is. Customers know when they will arrive
603 and sometimes call for their deliveries; sometimes deliveries are made to them by local trucks that we hire.

[fol. 883] In the last seven or eight years motor truck deliveries have come into vogue, and we use them up to a radius of 100 to 125 miles from our plant, in which
563-4 territory Armour and Swift sell in competition with us, and deliver in the same way. This territory was formerly served by peddler cars that delivered perhaps twice a week, while motor truck use enables practically daily deliveries.

569 We buy at both packer-owned and non-packer
564 owned stockyards, and notice no difference in competitive conditions. We use our own employed buyers, independent order buyers, and also buy direct from the country.

567 Conditions on the live stock market at East St. Louis are very competitive. We have every class of

buyer known there and lots of them. Order buying is extremely active at St. Louis. I think they buy 60 of 70 per cent of the total receipts. Stocker and feeder buying is quite a factor in the cattle market and when we are buying cattle we buy in competition with men who are buying for feeding purposes. Competition at these various markets is keen, very keen, very active most all the time. Referring to competition in the selling of meats, if it is possible to be any more keen or any more active, I would say it is perhaps a little more that way in the selling than in the buying. It is very, very competitive at all places. It is a highly competitive industry. Both in purchase of livestock and in the sale of our products we meet strictly high class competition from Armour, Wilson, Cudahy, and other packers, and I have observed nothing in the way of manipulation or control of prices in either the buying or selling end of their business. I do not find among my competitors any such practice as requiring customers to buy certain lines of articles in order to get lines that the customers want to buy from the packing houses. I know of no one who has anything so outstanding to sell that he can make someone buy some other commodity from him in order to get that. I do not know of a single article in the trade that has that standing.

In selling we also meet the competition of local farm [fol. 884] slaughter but their products cannot get very far from home, and their competition is comparatively local. I use "local slaughter" here in the sense of that in which local livestock supplies are used, and its products sold principally near the place of slaughter, as with non-federally inspected plants. These cannot ship their products outside the State where manufactured, without complying with the requirements for a federal permit, and to do so requires quite a considerable investment—quite a bit of expenditure for sanitary conditions, and facilities for federal inspectors. Close to half of the meat products from the hog go into cured forms.

I think the trend of trade advantage is rather against the large packer, as compared with the small one, because of the development of chain store buying in carload lots. The chain store, we will say, groups four or

five hundred stores in a district together under one purchasing head and they become a potential carload buyer. Generally speaking, the small packers do not have what is commonly known as a branch house, so we are enabled to sell those four or five hundred stores in a carload way and naturally if we do then the branch, the packer branch to that extent is deprived of selling those four or five hun-
576 dred stores. We think that the branch house system of doing business is not so good any more under the present trend. Of course there still are a great many retail stores to be serviced but it is much simpler for us to sell a carload of meat to one buyer than it is to hustle out and in a remote town sell to the three or four hundred individual stores. It is almost impossible for us to do that. The trend is in the line of concentrated and centralized buying.

609-593 For the last five years, we have sold about 10%
594 of our total business to chain store trade, out of
595 which 4% or 5% goes to our largest single chain store customer. Our eastern chain store business I consider desirable, but that in metropolitan St. Louis which goes to three different chains and equals 12% of our [fol. 885] total business in that district or half of our total chain store business, is not so desirable, because we do not get the prices from them.

The small packer also has an advantage in being a little closer to his business and being able to make quicker decisions.

579-80 It is generally considered that the large packers clean up the market each day on the stockyards, because the small packer's buying is more selective and the large packer has facilities for most anything that comes along. But this cleaning up the market is not as
592 much as it apparently sounds—just a few hogs dropped out of the loads here and there, which the large packers usually take to accommodate the sellers. It constitutes only a very small proportion of their purchases.

We operate no retail meat or grocery stores, and have never desired to, because we would not do it without interfering with our established retail trade. It would unquestionably tend to antagonize them. As to buying power, any

large buyer's business is very desirable. The larger
601 the order, the better we like it.

As between a $1,000,000 and a $10,000,000 customer, the latter would have the greater buying power; but his buying power would be more dangerous to me than to a larger competitor selling, for instance, $5,000,000 or $6,000,-
000 business a year, for it would be only a small
602 percent of his total sales, whereas it would be 50% of mine, and I would not want to jeopardize my business by having my outlet confined to one source that took half of it.

605 The meat packing industry is becoming more competitive each year. That is brought about because the smaller packers are developing, they are getting more into the more remote fields. They are branding their goods, generally progressing in the manufacture of branded prod-
ucts in identifiable packages. They are operating
610 more efficiently each year. The commission man sells his live stock for the high dollar. He does not care
614 where it goes. The classification between animals purchased to kill and stockers and feeders is made after sale and not before sale.

[fol. 886] (17) GEORGE A. WYVILLE, Director of Market Service, Associated Press, New York, testified:

Petitioners' Exhibits 58, 59, and 60 illustrate the nature and extent of market news service afforded by the Asso-
ciated Press to its 1,286 member daily newspapers
617-623 over its 225,000 miles of leased telegraph wires and other communication facilities. It covers 37 livestock markets daily.

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624 (18) ABRAHAM R. GOLDBERG, President, Alabama Packing Company, Birmingham, Alabama, testified:

I have been with this company since its founding eight and one-half years ago. In that time, our business has
grown to a present kill of 65,000 hogs and 14,000
625 cattle. Our capital investment, originally $23,000, is now $400,000.

627 We are not federally inspected, and sell only in
629 Albama, distributing 85% of our product by motor
631 truck, 10% by express, and 5% by local freight—all
626 within a radius of 100 miles of Birmingham. We buy livestock principally direct from the country through
628 independent country buyers, some few on public markets. We buy our livestock and sell our products in the face of keen competition with Armour, Swift, Cudahy, Wilson, and other packing concerns, and to a certain extent have an advantage over them, because we kill locally and sell our stuff fresh. This brings from a half-cent to a cent a pound more than meat of the larger packers shipped
631 in from outside. They sell the same way we do, and I have observed no unfair practices in their com-
631-2 petition. By that, I mean they do not rebate. They do not do one thing and tell me they are going to do another. For instance, Swift has its Premium hams well advertised, but I can make a ham as good as they can and do make it. If I want chain store business. I must sell them sometimes as much as two cents to three cents a
634 pound less than to the independent.

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637 (19) ANDREW P. MILLER, Vice-President and General Manager, American Packing and Provision [fol. 887] Company, Ogden, Utah, testified:

Prior to my connection with this company four years ago, I was with the Western Meat Company, San Francisco, for 18 years, and the Oakland Meat Company, Oakland, California, for five years. The American Company was re-
639 organized in 1924 from the Ogden Packing Company, which existed for six years prior to that time. In 1929 our kill was 13,000 cattle, 12,000 sheep, 57,000 hogs, and 500 calves; our total sales, $3,850,000. In 1925 they were $2,800,000. We have three branch houses at Butte, Salt Lake City, and Pocatello, and operate five leased refrigerator cars, which satify our needs, although
641 we could get more if we needed them, by placing our order in plenty of time. In addition to this, we distribute by motor truck, local freight, and express, over a radius of 200 miles, in interstate commerce, and are federally

inspected. There has been a marked increase in good road development in our country in the last four years.

Five years ago we were not delivering by motor truck at anything like the extent we are doing now. We were operating only one motor truck. The road conditions
642 have made this extension of our motor truck distribution over a radius of 200 miles possible and this has occurred within the last 5 years.

We buy our cattle, lambs, and sheep principally on the Ogden public stockyard, which is our totally owned subsidiary, where we come in competition with Cudahy,
640 Wilson, Hauser of Los Angeles, Western of San
642 Francisco, Swanson of Sacramento, and seven local slaughterers at Salt Lake City and Ogden. Buying competition is keen, and I do not feel that we are at any particular disadvantage.

There is no advantage in our ownership of the stockyards at Ogden other than the profits derived from operating the stockyards in a financial way. It is no advantage
647-a to us to own those yards other than the actual money we get from the yards for services rendered.

We come into competition in our sales and of the busiNiss with Swift, Armour, Cudahy and Wilson and
644 find their competition keen and clean. We have no [fol. 888] special market carved out or allocated to us. I do not think we have got any advantage over the large packer outside of the fact that we are a locally owned concern and we use that fact in our advertising.

The non-federally inspected plants have a decided advantage over the federally inspected plants. The
646 advantage is that their investment is not as great as ours, according to their volume; also in the matter of sanitation and the rules and restrictions under which we operate under federal inspection. This makes doing business more expensive for the inspected house.

Fresh pork is more perishable than fresh beef. Fresh meats may be held ordinarily ten days after killing, without injury, and fancy cattle a little longer. Frozen meats
645 can be carried indefinitely but it is not advisable to
648 them over 90 days, with a limit of 120 days. If the
650 fresh meat market becomes glutted, we can adjust to it by freezing or curing a larger percentage of our
651 product, and by cutting down killing. Frozen meat

652 prices are from one cent to two cents per pound less than the same goods fresh. Cured meat prices are such that if we have to cure, instead of sell fresh, we about break even in the long run. We aim to get a fixed 663-4 margin of profit over our costs, and 90% of the time we are able to do so. We will not sell unless we do make a profit. If we cannot, we simply reduce our killing.

We have never attempted to do any retailing, and do not care to, as our present trade would resent it and would probably go elsewhere. We sell about 2% of our 655-8 commodities to chain stores—no more because they are not inclined to pay the prices we ask. We sell generally in Utah, Southern Utah, Eastern Nevada, and Western Wyoming, and Butte, Montana. At one 656 time, we attempted to sell in Los Angeles and San 657-8 Francisco, but found it unprofitable, as we could not sustain the cost of shipping hogs alive from Nebraska, killing and processing them at Ogden, and shipping the meat to the Coast, even at the carload rate, and [fol. 889] selling it in competition with Swift and Armour there, who brought their meats straight from Missouri River points. This does not apply to lambs, but we 659 could not sell lambs there either, as it would not be 662 profitable to maintain a sales organization there just for the lamb run season. None of the packing concerns selling in competition with us handles grocery products, to my knowledge.

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665 (20) HENRY FISCHER, President, Henry Fischer Packing Company, Louisville, Kentucky, testified:

666 This concern kills annually between 30,000 and 40,000 hogs, 9,000 cattle, and 5,000 lambs, and has had 667 a 100% increase in business since 1923, from a sales volume of around $1,000,000 that year to $2,250,000 last year. We sell only in Kentucky, and are not federally inspected. We distribute all our products by motor 670 truck, except 2% or 3% by express, over a radius of 100 miles, but mostly in the City of Louisville; and use no refrigerator cars. We sell to independents and chains, principally sausage and specialty goods, but 669 also fresh pork and beef. We buy 60 to 70% of our livestock at our plant directly from the farmers, who

truck it in—the rest on public stockyards at Louisville, Kansas City, and Chicago.

Both in buying and selling we meet a highly com-
671 petitive market, including Swift, Armour, Morrell, Rath, Indianapolis Abattoir, Kingan, and others; also with farm slaughter. I think we have a little advantage over other packers due to our stuff being locally killed and sold fresh, and sometimes get from one cent to one and one-half cents more for it.

673 We take note of the state of the Louisville market and the prices being charged there and in doing so we pay the most attention to the price being charged by the smaller packers because we have quite a few local [fol. 890] packers in Louisville.

We have never cared to retail, because we believe
672 the retailer would then refrain from buying from us.

Sometimes we have difficulty getting retailers to
675 reduce their prices promptly when we cut ours, in order to move a flood of a certain commodity. Others are very prompt. It is just a difference in salesman-
676 ship or merchandising skill. Chain stores are generally more alert and responsive to price changes than independent retailers.

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(21) David G. Madden, President, East Tennessee Packing Company, Knoxville, Tennessee, testified:

678 This is a slaughtering-packing concern, killing last year 50,000 hogs, 9,000 cattle, and 8,000 to 10,000 sheep, lambs, and calves. Its business has doubled since 1920. We sell within a radius of 300 miles of Knoxville; and up to 100 miles deliver by motor trucks, which we have developed in the past year and find very satisfactory—superior to the railroad shipments in that radius.
679 Beyond this we operate car routes with leased refrigerator cars, which we have no difficulty in getting.
680 We are federally inspected, but sell in keen competition with both federally and non-federally inspected plants. The small independent plant, in my opinion, has a certain advantage over the large producer, who sells at a distance from the point of slaughter, because he is more

flexible in adjusting himself to conditions, and because of the local preference for home-dressed meats. We have experienced no unfair practices from competitors.

681 We are at a disadvantage over what is termed the country killers who depend largely upon weather conditions and do their slaughtering in the country but bring it in on the market and dispose of it at whatever price they can. They go on the market or get off according to whether it is profitable or unprofitable, whereas in operating a concern like ours you have got to be on the market whether it is good or bad. That, of course, is increasingly true of what are called the large packers.

[fol. 891] In addition to meats, we handle cheese, butter, eggs, canned fruits and vegetables, and dried fruits;

682 and our salesmen solicit orders for all these lines at one time. We buy on the various public markets,

683 in addition to our local yard and country points;

686 and they are also in keen and active competition. About 40% of our hogs are bought direct, in which Armour and a few independents compete with us, but Swift does not.

687 We started originally as a retail store, and at one time marketed all our product from it. We still have it, and one additional at Knoxville; but retail now less than 1% of our products. The store manager buys wherever he can most cheaply, whether from us or other packers. We have not desired to increase our retail business, because it seems to create prejudice in our retail customers, and drive them elsewhere.

689 We sell 2% or 3% of our total to chains, of which there are but few in our territory. It is just recently that they have started down in that section. Their business is as satisfactory as any other, and we make the same prices to all. Our selling market extends 300 miles to the south, and 100 to 150 miles to the east and west—an average of perhaps 200 miles from Knox-

690 ville. It is not advantageous to go beyond this, because with transportation costs it is not profitable to draw hogs from the west, and ship the meat products back to the same territories.

We can serve our immediate territory to advantage over competition, but if we should go to Nashville, for instance, we would meet the competition of a local plant there, in

addition to that of Swift and Armour. The local plant buys hogs from the Nashville market, where we
692 would have to pay seventy-five cents to $1.00 freight, which is more than our profit. I cannot say why that keeps our competition out, but not that of Swift and Armour. Our peddler car service is satisfactory. We do not use railroad package car service to any considerable extent. If our shipments are not of sufficient bulk to fur-
[fol. 892] nish the peddler car minimum, we would either pay the penalty or ship by express. You have to
693 have at least 10,000 pounds in a car, or pay for it anyhow.

694 Express is considerably more expensive than LCL or peddler car service. Railroad package car service is not suitable, because half of our products are perishable and require refrigeration, and railroads do not have proper refrigerator package car service. In fact, there is none out of Knoxville, although there is some into it from Chicago. We have something over 200,000 customers, as represented by accounts in our books. If, for the development of packer retailing, a large part of this were to be taken over by Swift and Armour, it would be very seriously to our disadvantage, as it would narrow our market, and compel us to sek other outlets. The mileage we receive from the railroads on our refrigerator cars does not equal the rental we pay for them. Handling canned goods, fruit and vegetable lines in them, along with meats, is of no special advantage, except that it frequently saves us the penalty which we would otherwise have to pay because of lacking the minimum weight.

697-9 The shipment of canned goods, fruits and vegetables in peddler cars does not entitle us to a lower rate on these commodities than we would have to pay if we shipped them less than carload. There is no difference in rate at all.

STIPULATION RE TESTIMONY

In lieu of separately stating such testimony, it is conceded the following witnesses, numbered 22 to 27, inclusive, as hereinafter named and described, who are engaged in

the slaughtering and meat packing business, testified generally to the following substance and effect:

[fol. 893] 1. That they buy livestock both upon public stockyards and direct from the producer or shipper; that in the case of direct buying sometimes the stock is trucked into their plants; sometimes purchased at country concentration points, and shipped in.

2. That in selling their products they can make deliveries by motor truck transportation to advantage up to a radius of 100 to 125 miles from the plant; that in that radius such deliveries are superior to rail deliveries, because they enable store-door deliveries and eliminate cartage charges at points of shipment and destination; and enable more frequent deliveries and the maintenance of more personal contact with their customers; that, for such deliveries, their own trucks are sometimes used for shorter distances, and commercial truck lines for longer distances; that within this radius, this truck method of delivery, which has developed largely in the past ten years, has largely superseded peddler refrigerator car deliveries previously used; that Swift and Armour and other large packers use this mode of delivery, in competition with them.

3. That both in the purchase of their live stock and the sale of their products they meet active and keen competition from Swift and Armour, Cudahy, Wilson, and other packers, who respectively buy and sell at the same points. That there are no agreements between themselves and their competitors, and they know of none between their competitors, with reference to price manipulation or fixation, allocation of territory, or other unfair practices; that there is no monopoly in the meat packing business or the sale of its products.

4. That in selling they also meet the competition of farm slaughter and local slaughter, the products of which are sold in the vicinity of the place of slaughter.

[fol. 894] 5. That they buy live stock both on the so-called packer-owned and non-packer owned yards, and notice no difference in the service rendered at the two.

6. That the large packers, such as Swift and Armour, usually "clean up the market", on public stockyards, by

buying up the odds and ends left over after the day's sales. This they are able to do where the small packer is not, as the latter's buying is more selective, while the large packer is equipped to take care of all classes of stock.

In addition to their testimony as above summarized, said witnesses also testified severally as follows:

(22) GEORGE L. HEIL, President, Heil Packing Company, St. Louis, Mo., testified:

Direct examination:

Our business is pork packing and I have been con-
700 nected with the company 27 years. Our annual kill in 1929 was about 155,000 hogs, and about 1,000
701 cattle killed for sausage, and the volume of our business in 1929 was close to five million dollars,
702 which has been about the same for the past 5 years. We sell in the States of Missouri, Illinois, Arkansas and Kentucky. We buy the largest percentage of our hogs in Kansas City, Springfield, Mo., and some few in Omaha and East St. Louis, Ill. We have a salaried buyer in East St. Louis and use the order buyers in the different
703 markets. The competition in the buying in the Kansas City and East St. Louis markets is keen.

Our plant is federally inspected. Sixty per cent
704 of our business is done in the vicinity of St. Louis. We deliver by motor truck within a radius of 100 to 125 miles and also by express and freight. We used motor trucks as far back as 10 years ago for our St. Louis de-[fol. 895] liveries and in the last 4 years we have extended that out into a radius of 100 miles. I think the truck deliveries to customers beyond the city limits is an improvement over the railway. You can give them store-door delivery. In shipping out of St. Louis by rail
705 we use refrigerator cars which we obtain from the American Refrigerator Transit Co. We have no difficulty in getting the refrigerator cars that we need for our shipments. In the selling end of our business we compete with Swift, Armour, Wilson and Cudahy, and find them fair and have not observed any unfair trade practices in the selling end of the game. We compete with these

packers at the various live stock markets where we are buying.

707 We do not find that we are at any disadvantage in competing with the large packers for our requirements and this is also true with respect to the sales end. We come in competition with non-federally inspected plants and I would say that they have a big advantage over us.

Cross-examination:

710 We only buy about 1% of our live stock directly from the country. We sell about 5% of our city sales to chain stores and none of the other sales. That is divided among approximately 500 711 stores owned by about 3 chains. We have an ample market to dispose of our product without being compelled to sell a larger portion to the chains and have not found it necessary to try to expand our chain business. We like to support the small merchant in preference to the chain. We feel we would prefer to have a whole lot of small merchants trading with us than one or two great big fellows.

[fol. 896] Our motor truck radius is within the radius of 100 miles but with the refrigerator cars we ship all 712 over the central states. We ship to Chicago, to New 713 York, and to Canada. We do not make a regular attempt to get that business at those distant points. The brokers come in and ask us what we have got to offer.

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(23) Sederin L. Frey, Secretary-Treasurer, L. E. Frey and Sons, Inc., New Orleans, Louisiana, testified:

Direct examination:

889 We are sausage manufacturers and wholesale dealers in provisions such as cured pork and smoked 890 meats. Our company was incorporated January 2, 1921. The kill of our company in 1929 was about 5,000 beef and about 3,500 hogs. Our kill has increased three times over our kill in 1922 or 1923. We sell our products in the City of New Orleans and within a radius of 100 miles in the surrounding country. We do not either

buy or sell outside of the state. Our plant is not federally inspected. We buy our live stock at the New Orleans
891 Livestock Yards Co., a public yard. At times of the year Swift and Armour buy sausage material on this yard. We have 6 local concerns and there is one
892-3 order buyer there who ships out of the state. We buy in competition with these packers. It is active competition. In selling we come in competition with Armour, Morris, Swift, Cudahy, Wilson, Hormel, Morrell, Kingan, and White Provision within the City of New Orleans and in the surrounding country we compete with Miller
894 and Hart of Chicago, St. Louis Independent and Roberts and Oake. We find the competition of Swift, Armour, Cudahy and Wilson to be fair.

In New Orleans there are 2 slaughtering plants that are owned by the retail butchers. They slaughter about 75% of the meat consumed in New Orleans at these 2 plants. [fol. 897] The retail consumer market in New Orleans is about ¾ controlled by retail slaughterers.

Cross-examination:

895 We do not buy any live stock direct. We have never attempted to retail our own products but have thought of it. The retailers in New Orleans have been so unfair, you might say, in their methods to us that we are almost compelled to go into it.

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(24) HARRY A. SCHANZ, President and Treasurer, Cleveland Provisions Co., Cleveland, Ohio, testified:

Direct examination:

900 I have been connected with the Cleveland Provision Co. 19 years. It engages in the complete slaughter of all kinds of live stock and processing the products. During the year 1929 we killed in our own plant 350,000 hogs and 25,000 cattle and brought in 50,000 dressed hogs. We killed about 15,000 sheep and 15,000 calves. Our 1929 kill is about the same as the kill
901 of 1920, and total sales in 1929 were $13,500,000 and in 1920 were $12,000,000. Our operations have decreased in the last two or three years. That is due to our

inability to meet competition, particularly in fresh pork and dressed meat of the Western packers or packers killing at the source of supply. The chain store expansion is having an effect on our business. We are losing the business of the fresh pork and dressed meat. We can
902 not meet the price without severe loss. I would say that the chain store buying is closer and keener than [fol. 898] the buying of the single unit merchant. We operate chiefly within a radius of 100 miles of Cleveland and make deliveries by motor trucks. We operate 45
903 trucks. We sell about 50% of our products within the corporate limits of Cleveland and about 85% within a radius of 100 miles. We ship 10 to 15 per cent of our products by refrigerator cars. We have a few under lease and have no difficulty in getting cars. We op-
904 erate two car routes. Our plant is federally inspected. We buy our live stock from Missouri River markets up to Cleveland. De do semidirect buying from a man in Indiana who buys on his own account and sells to us. We take all his purchases. There is considerable competition in the buying end and we compete
905 with practically all classes of packing companies. The competition is lively and keen. We have three buyers at Cleveland, a cattle buyer at Chicago and a hog buyer at Fostoria, Ohio. If we buy through an order buyer we wire him the class of stock that we want with
906 the limitation of price. There are 20 to 25 buyers in the Cleveland Yard. In the selling of our products we meet the general competition of Swift, Armour, Wilson, Cudahy, Rath, Hormel, Morrell, Kingan,
907 Oscar Mayer, and several smaller packers outside of Cleveland and fifteen or twenty packers in Cleveland, all of whom sell in the Cleveland territory. We find the competition in the selling end lively and keen. The competition of Armour, Swift, Wilson and Cudahy is keen but perfectly clean and satisfactory. We do not sell any products except packing house products and by-products.

About 20% of the retailing of meat in Cleveland
908 is done by large chain store concerns. We have one retail store at our plant, in Cleveland. I presume we purchase at what are known as packer owned yards

although I can not identify the packer owned yards,
909 and in dealing on the various yards I have found no difference in respect to the fairness of the methods in one place as compared with another.

[fol. 899] Cross-examination:

I think the chain stores have something like 500 meat stores in Cleveland and surrounding territory of 40 miles. There are probably 4,000 independent stores in this
910 territory handling meats. In a general way the chain store meat departments have increased their volume in the last few years and the volume of the independent retailer has decreased. In the grand total
911 the independent retailers are larger.
912 About 8% of our sales are made to chain stores and our largest chain store customer buys probably
913 4% of our output. We have about 2,500 active customers buying every month. We prefer a large number of customers buying in quantities of not less than $5. It costs more money to sell a $5 order and deliver it than we get out of it but so long as your orders are over $5 the greater number of customers the better. I do not consider the selling of 4% of our output to our largest customer as dangerous to our business.
914 If a company is strong financially we would not want to sell it more than 10% of our output but
916 under that percentage we would consider it safe. We would be unable to extend our business beyond our present radius. Our live stock costs us too much. We can not meet the live stock cost of the Western packer. That is because of the market differential in different sections of the country. We are able to get a better price for our product within 100 miles than we can by shipping it at a different distance because it is fresher and the
917 service is quicker. We never make l. c. l. shipments.
918 When we have to make a shipment to a customer before the next peddler car is due and get it delivered promptly, we ship by express. The express rate is considerably higher than the railroad freight rate,
919 either carload or l. c. l. The railroad l. c. l. service is substantially slower than the peddler car service [fol. 900] or express. If we were to ship a less than carload shipment for a distance of 50 miles and we gauged

the leaving time of the freight train with our arrival of the truck at the freight station, we would get that meat into that town just as promptly in local freight, as we would with our car route. The shorter the distance the less difference there is between the l. c. l. and the peddler movement. With our peddler car movement we have men to meet those cars at the point of destination and handle it promptly and unload it. This is not true with l. c. l. shipment.

921 If we have a surplus of fresh meat on our hands we sell it for the best we can get. We freeze some of our meat products in the winter and adjust a fresh meat surplus by putting a larger portion of the product through the freezing process.

922 Our product is preferable in the local market to that of the Western packers because it is fresher and has a better appearance. I am familiar with the quick freezing process in a general way. If the Western packers could put their meats on the Cleveland market in just as good or better condition than ours so far as appearance and other desirable qualities are concerned, that would impair the competitive advantage we now have over the larger packers but I would not say it would seriously impair it. It would destroy whatever competitive advantage we have over them now in the matter of freshness of meats. It would not affect the condition of the

923 smoked meats and sausages. If the Western packers were able to offer quick frozen meats with their very desirable qualities at a lower price than we are able to offer our fresh meats, that also would further impair our com- [fol. 901] petitive advantage over them. However, I am assuming their ability to do that.

In using the term Western packers, I meant any packer that has a slaughtering plant at a source of supply of the live stock, particularly in the Mississippi Valley and Iowa.

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(25) THOMAS W. TALLIAFERRO, President, Hammond, Standish & Company, Detroit, Michigan, testified:

Direct examination:

925 I have been in the general packing business a little over 50 years. Hammond, Standish & Co. was es-

tablished in 1858. The original Hammond in the firm was George H. Hammond who was the first man who ever shipped fresh meat in a car cooled by ice. He was the father of the facility that made the present packing
927 business possible. Our plant is Federally inspected.
928 In 1929 we killed 338,000 hogs, 10,000 cattle, four or five thousand sheep and 2,500 to 3,000 calves. The annual kill of the company in hogs in 1922 was 268,000. Since 1922 there has been a considerable decrease in the company's slaughter of lambs and a small decrease in the slaughter of calves. Our 1929 sales were approxi-
929-30 mately $12,500,000 and in 1922 its sales were $6,600,000. There are factors which have affected the profitability of doing packing business in the last few years. There are more competitors in the field now than there were 5 or 10 years ago, both in the buying and the selling end. In addition to that, the packing business is changing every year. Ten years ago, we marketed a very much larger percentage of our products abroad, probably 30%. Today it is less than 1%. That item in itself is a [fol. 902] very radical change in the business, because really our surplus is marketed abroad, and whatever you can dispose of your surplus for, will be an indication of whether you can make or lose money on your year's business. The chain store has come in, as we all know, within ten years and that has perhaps been one of the most striking changes that we have had in the marketing of the product.
930 The chain stores have expanded very rapidly. The first meat department that the A. & P. put into their house was put in by us in Detroit in 1924 or 1925. They came to us and said they felt the need of a meat department in their stores on account of the competition from Kroger, who had already established meat markets, and said they knew nothing about the meat business and asked if we could give them a little advice. We did. Then the President asked if we would equip his market for him and recommend somebody to run it and we sold them the first lot of meats they ever bought. The President said they expected to put in 100 meat markets within a
931 year and so far as I know he did. In our locality there has been a tendency to add meat departments to chain grocery stores with the exception of one, namely

C. F. Smith, though he handles some cured meat, bacon and things of that kind but no perishable products.

932 In the Detroit territory in 1920 the Atlantic & Pacific Tea Co., had 100 stores and none of them handled meat, the Kroger Grocery & Baking Co. had 100, C. F. Smith Co., 150 and the National Tea Co. none. In 1930, the Atlantic & Pacific Tea Co. had 1,200 stores in the Detroit territory, Kroger had 815, C. F. Smith Co., 619 and the National Tea Co. 26.

933 Hammond-Standish & Co. has two distributing warehouses in Detroit equipped with refrigeration. [fol. 903] We distribute by our own trucks over a radius of about 50 miles and beyond that usually have a trucking company make deliveries. Seventy per cent of our
934 products is distributed by auto truck delivery. We have never had any trouble getting all the refrig-
935 erator cars we wanted either from the railroad company or car company or from the packers. When we sell abroad we use refrigerator cars to the seaboard. We ship by refrigerator cars to Montreal and Newfoundland in the summer time and New York in the winter time.

936 There has been an increase in the use of motor trucks during the last 8 or 10 years. This has been
937 brought about largely by the improvement in roads. The motor truck delivery now enables us to make a contact from point of origin to our customer quicker than the railroad. The railroad is out of date in that respect. There is economy in use of the auto truck as compared with the railroad because you save two deliveries and oftentimes save the expense in the difference in the kind and quality of the package that you ship in, the handling being much more gentle than on the railroads. Other concerns such as Wholesale grocers are now making their deliveries by motor trucks.

938 In the selling end of our business we encounter keen competition around Detroit. At the present
939 time there are 27 uninspected killers in Detroit that slaughter cattle, calves, lambs and hogs. In 1920 there were only 4. One of these uninspected slaughtering concerns at the present time kills more lambs than all of the Federally inspected plants at Detroit put together. None of these 27 plants have Government inspection.

There are 5 Federally inspected packers in the Detroit territory. They have not increased any in 10 years.

940 In the Detroit territory there are also 23 sausage manufacturers that manufacture sausages, boiled [fol. 904] hams, smoked meat and do a general line of packing except slaughtering. In 1920 there were 4 such concerns.

941 We buy our live stock in the usual open markets, Chicago, where we have a buyer, East St. Louis, Omaha, Kansas City, St. Paul, Sioux City, wherever we can get them or wherever they look reasonable to us. We do a little direct buying occasionally but do not find it so satisfactory.

942 It is my judgment that no group of men nor concerns engaged in the packing business could maintain artificially or unreasonably high prices for any period of time. All that you have heard about that—there is nothing to it. You can not maintain a price that is even a fraction above another market but what it is flooded the next day with products. A butcher in Detroit can telephone over to Chicago at two o'clock in the afternoon and the product is at his door at eight o'clock in the morning, as quick as I can deliver to him, and I am only a mile and a half away. With the present rapid dissemination of market news, artificial manipulation or depression of prices to the harm of the producers is not possible in the industry.

943 In 1920 there were 350 chain stores in Detroit and in 1930 there were 2,660. Our company sells about 10% of its output to chain stores. We get the same price from them that we get from everybody else. Anybody who buys the same amount of the same product gets the same price but there is a difference in price made to the one who buys a large quantity as against the one who buys a small quantity if delivered at one time. The chain stores buy in larger quantities than any average small one can do and on account of their quantity buying their unit prices are lower than that of the small buyer.

[fol. 905] Cross-examination:

947 The increase in our business from 1922 to 1929 is influenced to a certain extent by an increase in the price of meat products, but it is also due in a very large

measure to the increase in population in Detroit, which has been very considerable in ten years. The price of meat products has increased since 1922. I would not say substantially because some articles may be fully as high now as they were then. I think that taking it as an average there is some advance but not a very material one.

948 The radius of our motor truck delivery is 25 to 50 miles. There is no limit to the distance we serve by rail. We go to the end of the rails when the customer is located there. We do that as a matter of practice. I mean we often sell in San Francisco and Seattle always in carload lots. We do not operate peddler cars but did at one time. Everything in that nature is handled by motor truck now. We use the commercial truck line up to a hundred miles and everything beyond a hundred miles is in carload lots, except on the D. & C. and Cleveland boats.

949 We ship pooled cars. At long distance it is the rule to pool orders. There may be a dozen orders in the car. We ship it to one man and thereby secure the carload rate. When it gets to destination it is distributed among the different buyers in the town. This man is usually our representative there. We have no

950 branch houses. In case we have to make less than carload shipments we usually employ the motor truck and beyond the motor truck radius the interurban and occasionally we express, but not often because the handicap is too great in that respect. It is only used in emergencies. We do not avail ourselves of railroad package car service L. C. L. because it is slow. They have universal trucking [fol. 906] companies that do more effectively what the railroads are not able to do; that is, these universal trucking companies assemble shipments at one place and load those shipments into a car and consign to their office in which the consignee is located, thereby securing the

951 carload rate. When we do that we have to pay an additional fee to the trucking company, but usually we get less than the local rate but not quite so good as the carload rate. There is a saving for us and a saving for the customer and a very material decrease in time. The company which assembles these shipments is the universal forwarding company. If I said trucking company, I misspoke myself. The ability of the forwarding company to render this service depends on its ability to assemble a sufficient quantity of goods from its various customers to

make up a carload going to a place where there are sufficient buyers to buy that carload. Possibly some de-
592 lay might occur, but they usually get enough shipments together at the different large centers. They do not take in the small town but take in the larger towns say in New York, Baltimore, Washington, San Francisco, Seattle and Chicago. Only the large cities where the rate is high and the distance is great. We make no attempt to serve customers beyond this 100 mile radius in this manner in smaller towns where they could only be served by shipments in L. C. L. shipments. The railroads offer refrigerator package car service from Detroit two days a week to New York, Boston and Philadelphia and every other day to Chicago. I think Washington is one day a week.

953 It is not possible to ship by these refrigerator package cars to any point on the line between Detroit and its destination. The railroads do not furnish refrigerator package car service to intermediate points. That [fol. 907] is done by the peddler cars and only so far as a packer can handle it by peddler cars can he serve
954 those points. Our competitors use motor trucks for delivery in the same way we do. In about the same radius. And I should imagine that their motor truck delivery has proceeded over the past ten years about apace with ours. Any change which has taken place affects us and them equally.

955 It has always been more or less the practice for wholesalers to sell food products to retailers at certain times of the year for future delivery in succeeding months, but this has decreased and the practice of the so-called hand-to-mouth buying, by which I mean buying for immediate rather than future needs, has increased very materially in the last two years. The desire for quick
956 deliveries and small inventories has been increasing for some time. This hand-to-mouth buying has emphasized and increased the importance of quick and prompt deliveries from wholesaler or manufacturer, to the retailer. It would be difficult to estimate this increase in terms of percentage. The result of this hand-to-mouth buying is to put out of the competitive picture absolutely the
956-7 wholesaler who is not in position to make these quick and prompt deliveries as compared with the one who is in that position.

957 The large packers, such as Swift and Armour compete keenly with us in our territory. We have a little advantage over them as we can inject more personality in our business than the big fellow. I do not know
958 of any other advantage. We buy on the same market, sell on the same market, pay the same prices, labor conditions are about the same, and about the only advantage we have over them is we can shake a man's hand a little more often and perhaps do a little favor that the other [fol. 908] fellow cannot do. It is also self-evident that we can offer meats to the public in a fresher and more desirable condition than the large fellow because the nearer you are to the date of slaughter and the point of consumption, the more pleasing and fresher the product will be. We can get a slightly higher price for our meats than the western packers from our customers in Detroit, but we cannot from the chain stores.

We are watching the quick-freezing process awfully close. It means an additional revolution in the busi-
959 ness. We have had enough of them in the last ten years to suit me and I am afraid we are up against another one. The quick-freezing process cannot enable a western packer to place his meats on the table of our customers as fresh and with as good a flavor and equal in quality to the meats which we sell them in fresh condition. He cannot deliver a frozen article in the same condition as a fresh article. It may be of the same food value but it will not look the same and it is not the same because it is frozen. It is not in the same physical condition as if it were not frozen though the flavor might not be impaired at all.

There is probably no difference on the table but
960 to the buyer there is a difference, because the buyer has been used to receiving unfrozen meat. It is an entirely different looking article and it is a matter of education before they will, in my estimation, accept it on an equality. I do not think that after this educational process has been completed that our competitive position will be seriously affected. I do not believe that the packer can freeze the meat and put it up in packages and deliver it as cheaply as he can today. And I do not believe there will be any difference 10 years from now.

[fol. 909] We buy our live stock from the same points as our larger competitors. We buy the largest per-
961 centage outside of Detroit and are buying less and less at home and more at distant points. This is because the local competition is so much greater and there are so many more animals slaughtered by local people than there were 10 years ago. We have been cut out of that trade very largely.

962 When we buy cattle or stock at distant points it has to be shipped to Detroit for manufacture. As compared to our packer competitor, buying and killing on those same markets and shipping the product to our territory for sale, we are at a disadvantage of a dollar a hog and in some instances more. Hogs bought on the same day and killed in central Iowa and hogs that were bought that day and shipped to Detroit, which would be the third morning, those hogs after paying charges—freight and other incidentals, would stand the buyer at least a dollar more, the product would. We make up that additional item of cost in competition with the western packer by the difference in offal and the small premium we get for fresh cut meats. We try to get more for the fresh cut meat. Sometimes we get a very material difference and sometimes we cannot. But Detroit being a large meat consuming center, and with a large foreign population, we are able to sell our offal to better advantage than at almost any
963 other point in the United States. This cost differential is due to the fact that there is about 25% average shrinkage in dressing; that is 25% of this freight rate right away that you have to pay on a product that is absolutely useless. In addition to that, every day that the hog is in transit he is actually worrying and shrinking in the meat about a half of one per cent for each 24 hours, which in the case of two days would amount to 1% which [fol. 910] would be in the neighborhood of ¼¢ per pound. Some times the actual rate per hundred pounds is less on live stock than on meat products and some times the reverse is true, but it is never as low per pound of meat as the rate on the meat itself. The person who buys live stock and transports it a distance to manufacture is at a cost disadvantage as compared to the person who slaughters it at the point of purchase and transports the finished

product to the same point, other costs being equal. The greater the distance, the greater the handicap.

966 Ten per cent of our total sales go to chain stores. The best customer we have on our books today is a chain store which buys about 50% of our total sales

967 to chain stores. When I said best customer, I meant the largest in volume. This customer usually takes our advertised goods which we are very anxious to push, therefore it is desirable. If we had to depend upon a half dozen customers for the sale of all our products, it would not be so desirable as to have many customers. I should estimate that we sell to 3,000 or 3,500 customers. I think it is desirable to have one customer take as high as 5 per cent of our total business. It saves selling expense on that part of it and it is a steady outlet. It would be equally desirable if he took 10% of the class of goods that he takes.

968 We used to handle canned goods at wholesale but discontinued it about 10 years ago because it was not profitable. The chief factor was that we could not get enough over the cost to pay the expenses. We never handled them at retail. We handled them more especially to make weight in our cars because we had at that time three or four peddler cars. When we discontinued han- [fol. 911] dling the canned goods in peddler cars, we could not get enough weight to make up a minimum shipment and it cost a penalty on the railroad charge which was too heavy, so we just threw up the whole thing and went out of it. Before the advent of the chain store, we used to

969 be able to pick up quite a few orders for canned goods in the local towns through which these cars traveled but the development of the chain store made it different and the automobile and good roads finished it. At one time the peddler car minimum was 20,000 pounds but afterwards it was reduced to 10,000 pounds, I think. If we got help to make up the minimum by loading canned goods with our meats, that would reduce the penalty otherwise chargeable against the meat. But even so,

970-71 the quantities we were able to handle did not justify continuing this service, because the automobile came in and did the same service, enabling our customers to go to adjoining towns and buy their canned goods cheaper than we could.

972 In my opinion, it is impossible for any agency in the packing business to fix and maintain a price substantially above market values or to depress live stock prices below market values.

973 The thirty per cent of our exports that I said had been lost are supplied by local production. The foreign countries are now producing more than heretofore, excepting England.

978 The Atlantic & Pacific Tea Co. does not do any slaughtering. I do not know of any chain system other than Kroger which is doing slaughtering. A. & P. and some others slice their own bacon. The 979 practice known in the retail trade as loss leaders used to be practiced much more than it is now. That practice consists of putting certain articles or com- 980 modities on the market at a low price for advertising [fol. 912] purposes, without particular regard to making a profit over cost on that particular item. The object is to draw the public to the store. This practice affects both the meat and grocery line. This practice may be used in either meat or grocery lines according to which they think will attract the more attention. In grocery lines it is applied to both branded and unbranded products. But in meat lines, seldom to unbranded goods.

981 Until now, the use of branded labels or names on meats has been confined principally to cured and smoked meats. Now it is attempted in two ways to extend that customer demand—one through the Birdseye quick-freezing process and the other is through cutting up the different articles that go direct to the kitchen and wrapping them in packages so that the consumer can identify 982 the article. The use of brands has been extended into fresh meat only on a small experimental basis.

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(26) HENRY NEUHOFF, President, Neuhoff Packing Company, Nashville, Tennesse, testified:

Direct examination:

983 I am President of the Neuhoff Packing Company and have been since it started operations in 1907. The company handles a general line of packing house products. In 1929 we killed over 120,000 hogs, 15,000 cattle,

10,000 sheep and 15,000 calves. Our kill in 1920 was considerably less. I think our hog kill ran around
984 65,000 or 70,000. It would be fair to say our kill was almost double in 1929 as compared to 1920.

The Neuhoff Packing Co. has a controlling interest in the White Provision Co. of Atlanta, Ga., engaged in the same line of business. That company killed in 1929 about 160,000 hogs and probably the same number of cattle we did though [fol. 913] not as many calves. There has been a considerable increase in the business of the White Provision Co. during the last four or five years.

985 Neuhoff Packing Co. operates about 20 car routes. We lease refrigerator cars. The White Provision Co. leases refrigerator cars also. We have no difficulty in getting cars. Both companies make deliveries to customers by motor trucks and this has been increasing in recent time.

987 The Neuhoff Packing Co. buys the major portion of its live stock at Nashville. The White Provision Co. obtains its live stock from various sources, but buys a good deal at Atlanta, Ga., and Tennessee and some from St. Louis and Kansas City. Sometimes Neuhoff Packing Co. buys at St. Louis and once in a while in Kansas City. We have a salaried buyer at Nashville. Our purchases at East St. Louis are made through an order buyer.

988 Swift and Armour buy on the Nashville yard and there are a good many other packers from the East who come there to buy. The competition there is very strong. We do some direct buying from the surrounding territory through middle Tennessee and part of Kentucky. We have our own yards surrounding our plant.
989 About 70-75% of our hogs are bought this way. The White Co. does very little direct buying.

Both the Neuhoff and White companies are Federally inspected plants. They sell mostly in the southeast.
990 And we meet a great deal of competition in selling. All the packers sell through that territory. The competition of the large packers is very fair. I think we are on a fair basis with them.

[fol. 914] There is one uninspected plant in Nashville and several in Atlanta, that is, pretty good sized sausage
991 factories and small killers and also a good many local butchers who do their own killing. In some

respects these concerns have an advantage over us. They do not have to build their plants according to government specifications and maintain certain sanitary conditions. They have a lower cost of doing business.

Cross-examination:

We sell to the chain stores in Nashville and Atlanta and in some instances at lower prices than to inde-
992 pendent retailers, as they buy larger quantities as a rule. Armour and Swift sell to chain stores also at both places. A good many times they are lower in price than we are, though some times we must be as low or lower than they are because we get some of the business.

Referring to our direct buying, we do not buy the hogs except when the producers bring them to our plant. The farmer trucks his own hogs in. Other packers buy at other points and have them shipped to them. They go out and solicit or have an agent out in the country who buys
994 for them. The packers who buy that way compete with us. The Birmingham packers, and even Kingan at Richmond, buy a good many hogs in Tennessee.

994 We sell the majority of our products within 100 miles of Nashville. A good deal of them are delivered by motor trucks. We ship some by express and some by peddler cars and also use commercial trucks. We use some railroad package freight but not on perishables because the railroads do not operate any refrigerator pack-
[fol. 915] age cars as a rule. Any one desiring to make shipments of perishable goods in LCL quantities, would have to express them or ship by motor truck. The commercial truck lines operate as far as 150 miles.

996 We sell between 10 and 15% of our products to chain stores and probably one-fourth of that goes to our largest single chain store customer. I do not consider that portion of our business to be in any way disadvantageous to us, or that it threatens our market position at all. I estimate that from our Nashville plant we sell
997 to from 2,500 to 3,000 customers. Part of our ability
998 to compete with the large packers depends upon ability to offer fresh meat, or fresher meat than they offer. If the western packers were able to put
999 into operation a process for placing on the tables of consumers in our territory meats that are just as

appetizing and desirable in flavor and of quality as the meats which we sell fresh, I do not know that that would affect our competitive advantage in any way. I think being a home concern there, we could compete with them. I think the people would continue to patronize us because we are a home industry. I think the public desire to hang on to home industries and home business has restricted
1000 the growth of the chain store though the chain stores have grown substantially notwithstanding that. Our largest chain store in Nashville is a home concern.

1001 (27) JOSEPH P. MURPHY, Vice-President and Treasurer, Blayney-Murphy Company, Denver, Colorado, testified:

[fol. 916] Direct examination:

I have been an officer of the Blayney-Murphy Co. for 25 years and was with the Cudahy Packing Co. at various points for about 10 years prior thereto.

The Blayney-Murphy Co. does a general meat packing business. In 1929 our kill was 20,355 cattle, 96,101 hogs, 5,409 calves and a few sheep. The Blayney-Murphy Co. started business in 1924 and its kill at that time was about 15,000 cattle and 60,000 hogs, some calves and a few sheep.

The company's percentage of profit on invested capi-
1003 tal was 9.1% in 1924, 6% in 1925 and 9.4% in 1926, 1.9% in 1927, 9.5% in 1928, and 4.8% in 1929.

1004 Our plant is Federally inspected. We sell our finished product in the Rocky Mountain region generally designated as Wyoming, Colorado, New Mexico, and portions of the states adjoining; portions of Texas, Arizona, a little of Kansas, a little of Utah, a little of Nebraska, and South Dakota. We have 9 or 10 car routes. We own three and lease approximately 20 refrigerator cars and never have any difficulty in gettting a sufficient number of cars. On one or two occasions we have
1005 borrowed cars from Armour and Swift. We have some route shipments by freight and a good deal of public utility truck service. We ship by these trucks to Northern Colorado and up as far as Cheyenne, about 110 miles from Denver. The use of the common carrier trucks

began in about 1921 or 1922, but it was not very satisfactory until two or three years later. The use of that service has expanded and increased considerably in the last few years and is much more dependable. We have a branch house in Denver and one in Pueblo.

[fol. 917] In buying live stock at the Denver Union Stock
Yards, we have as regular every day competitors,
1006 the Armour and Swift Denver plants and numerous
small non-inspected slaughterers and from time to time other packers have either order buyers or salaried buyers on the market. The buying end of our business
is in a highly competitive condition. We employ
1007 approximately 30 salesmen and own about 25 trucks
which we use for city deliveries. We come into competition both in buying and selling with the defendant
packers and find their competition to be very keen
1008 but very fair. I do not know of any unfair trade practices that these large competitors engage in.

Cross-examination:

1009 Last year we purchased about 25 per cent of our hogs direct. We prefer to buy on the Denver market
1010 but find it necessary to buy direct because of short receipts at times on the public market. In our direct buying, we meet as competitors practically any and all eastern buyers. They buy through what you call a collector. Swift and Armour compete with us in the direct buying.

1012 In certain territories we use straight L C L shipments considerably. The railroad refrigerator package car service is very limited in our country and those shipments are mostly cured meats which are not strictly perishable. If we are compelled to ship L C L shipments of perishable products we find the refrigerator package car service inadequate in certain territories. When we
1013 find it necesary to ship by express the transportation rate is a good deal higher but most of our stuff shipped that way is sold F. O. B. Denver.

[fol. 918] As a wild guess, I would say approximately 5 to 10% of our products are sold to chain stores, the
1014 McMarr Co., the Safeway Co., one or two smaller ones and two voluntary chains, the Red and White and the Home Owned. The latter do not pool their meat

purchases except on certain specials which they pick out and use as leaders for end-of-the-week advertising. They are usually branded, cured and smoked meats or lards, but not generally fresh meat. Between one-third and one-half of our chain store business goes to our largest single customer. I think we have in the neighborhood of 3500 steady customers. I do not consider that the proportion we sell to a single chain store is menacing to our market position in any way. If the number of customers to whom we sell were radically contracted, it would mean a little adjustment of our business. If we had to give the same service to 2,000 customers as we did to 3,000, we would rather have the additional number. You are generally able to get a little better price on smaller quantities and that is preferable unless the quantity is entirely too small where the delivery cost eats up the profit. I do not think that any of our meat packing competitors sell a general grocery line of canned goods, canned fruits and canned vegetables in our territory. None of the chain stores in our territory do a meat packing business.

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(28) PAUL W. TRIER, Treasurer and General Manager, Arnold Brothers, Inc., Chicago, Illinois, testified:

[fol. 919] Direct examination:

I have been in the meat packing business 11 years. Arnold Bros. Inc. is engaged principally in processing, the making of meat products such as sausage and smoked meats and cooked meats. With the exception of hogs, we buy our live stock already slaughtered. We have our hogs slaughtered on a free basis. We buy our live stock principally on the Chicago market. The competition there is very keen. Our annual gross sales last year were a little less than $5,000,000. About 50% of our product is sold within a radius of 50 miles of Chicago and the balance in Wisconsin, Illinois, Iowa, Michigan, Ohio, Pennsylvania and a great many other places in smaller degree. We deliver by our own trucks, by express and some

refrigerator car service. We have no trouble in obtaining refrigerator cars from the railroad.

1020 We encounter very keen competition in the selling of our finished product. We have never come into contact with any unfair trade practices on the part of the large packers. We buy our carcass meats from everybody, from Armour and Swift, as well as from other packers such as Agar, Hormel, Decker, Morrell, East Side Packing Co., Independent Packing Co., Dubuque Packing Co., Rath, Interstate, Brennan Packing Co., Hy-Grade Provision, Roberts & Oake, Boyd Lunham, and several
1021 others. We buy from Armour and Swift and then sell our finished products in competition with them.

Cross-examination:

1022 About 20 per cent of our raw material by value is bought on the hoof. About 10 per cent of our [fol. 920] products represents fresh meats. We do not use refrigerator package car service for L. C. L. shipments very much. Most of our shipments are made by express due to the service we have to give our customers.
1023 We have no car route service.

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769 (29) FREDERICK S. SNYDER, president and general manager, Batchelder, Snyder, Dorr, and Doe Company, Boston, Mass., testified:

In addition to my connection with this concern for the past forty-three years, I was during the war a member of the United States Food Purchase Board; and chief of the division of coordination of purchase, later chief of the meat division and chief of the cold storage warehouse division, chief of the division of miscellaneous commodities, all under the United States Food Administration. I am also chairman of the board of the American Institute of Meat Packers.

Batchelder, Snyder, Dorr, and Doe Company is in the business of selling perishable food products, both meat and other lines, and does all the major meat packing functions except slaughtering. It buys mostly carcasses from perhaps a hundred different midwestern packers, though in some cases live animals which it has custom slaughtered.

In either case the carcasses are shipped east and we carry forward the processing work which completes the packing and distribution process.

772 Batchelder, Snyder, Dorr & Doe Co. distribute its products chiefly over New England and the northeastern section of New York State; to a degree throughout the length of the Atlantic seaboard, to Florida and Georgia, and some exporting to the island possessions off [fol. 921] the Atlantic Coast and a small amount of export business of specialties to European centers. The products handled by the company include meats, butter, cheese, eggs, fish, wholesale fruits and vegetables and canned fruits and vegetables.

773 Our sales are from eight to ten million dollars, our profits slightly less than two per cent on sales volume, our invested capital $1,500,000, our earnings last year eight per cent on preferred stock and a little larger on common stock. Since July of last year we have
774 been a subsidiary of General Foods Corporation of New York City, which includes a large number of subsidiaries manufacturing and distributing food products, including Baker chocolate, Maxwell House and Santa coffees, jello and mayonnaise products, etc. It is not to our advantage to slaughter, because of the cutting loss which has been sustained by slaughtering packers
775-6 seventy-five to eighty per cent of the time for the past ten years. By this I mean the value of a car- [fol. 922] cass in terms of its primary parts at their market value following its cutting, as compared with the original cost of the whole plus the cost of putting it into that state.

776 Referring to the advantages of the small packer over the large packer, the small packer, having a business in a locality where his chief market is within, say, 100 miles of that locality, is giving concentrated attention to his business in that section. In the presence of a surplus of stock which he feels he must move at any time, he utilizes the services of brokers all over this country and abroad, if he has a product that is made for foreign use, or of such character that it can be used both abroad and here, and disposes of it without the burden of carrying the branch house system which the leading packers must necessarily have. The carrying of that distributive outlet throughout the

United States is a very serious burden and is becoming a more serious burden as time goes on, to the leading packers.

Distribution methods are changing rapidly the use of the branch-house system, which has been declining in recent years. The leading chains are purchasing in carload lots direct from principal or intermediate packers, shipping to their own warehouses, cutting it for the particular requirements of their own retail stores, distributing the product with their own trucks, including both meats and groceries, and so spreading the overhead of delivery and sidepassing any use of the packer's branch-house for that purpose.

Retail merchants have steadily been diminishing in numbers with the development of the chain store form of merchandising, which is more efficient. Possible chain store economies include the use of strategically located ware-
[fol. 923] houses. The rapid changes in the methods of distribution at retail, are changing very rapidly the use of
the branch house system which the packers have
777 developed. I have seen the development of that
branch house system and have been witnessing its decline in recent years. The leading chain stores are purchasing in carload lots direct either from the principal packers or from the intermediate packers, shipping to their own warehouses, cutting in their own warehouses for the particular requirements of their own retail stores, distributing the product with their own trucks, including not only their fresh meats, but groceries, so spreading the overhead of delivery, and side-passing any use of the packers' branch house for that purpose. Of course, the retail merchants have been diminishing in numbers steadily since the development of the chain store form of merchandising and will continue to do so, very probably, for some years to come, with a corresponding increase in the development of the chain store system, which is more efficient, of course, than the system which it is, in part, replacing. The over-
head of chain store organizations is spread by utiliz-
778 ing the strategically located warehouses of the chain
store concerns, which are so located that they can, with the greatest convenience and at the lowest cost supply their branch stores, not only with meats, but with groceries, fruits and vegetables, and everything which they sell. Therefore, they take out 100% loads always, bring

back their own empties which they can use for repacking and thus make the economies which are incident to utilizing their own returnable crates and containers. It is highly efficient, highly economical.

779 During the past decade the chain stores have developed very rapidly in the distribution of fresh meats, and while, for certain reasons, there appears to be [fol. 924] a slight slowing up of the process, at the moment, they will in some form continue to do that expansion because every family has a high percentage of its living bill in the form of meats, and it is to the advantage of the chain store to spread its own overhead by selling the same family both its groceries and its meats, its fruits and vegetables, in fact all the perishables which go into the household economy.

779 The chain store organizations have increased the diversity of the products handled by them steadily from a very conservative list of groceries; they have gradually expanded the groceries, and then have added meats, fruits and vegetables, and in fact about everything that sells well, that the ordinary grocery store han-
780 dles. They still try to maintain a somewhat more conservative list so as to avoid carrying dead stock, but their list is now expanded until they give a very excellent service to almost any demand that comes to them. The tendency is to replace the old-time grocery store on the one hand and the old-time butcher store on the other, with the chain food store.

The term "integration" is not widely used in our industry. It means the meshing together of interests that will naturally work together, whether of corporations, processes, or lines of merchandise.

The chains utilize their warehouses to perform what otherwise would be the wholesale function of independent wholesalers. They receive the whole cattle, cut them to meet the particular requirements of their own retail stores, which vary according to locality. That part of their business I should call processing. Their manufacturing, however, is performed by these people in addition, as, for example, the manufacture of sausage, and the mak-
781 ing of certain other products which they sell at retail. In the last decade some of the chains have gone so far as to purchase packing houses. This tendency

of the chain organizations to enter the manufacturing field is steadily widening in every direction.

Heretofore the preservation of the freshness of meat from time of kill to time of sale for consumption has been accomplished by "refrigeration" and "freezing", the [fol. 925] former referring to carrying meats at approximately 32° Fahrenheit upward, the latter from 32° downward. Due to chemicals in the meats, it requires 1½° to 2° below 32° to begin the freezing process, which is not completed into absolute freezing until we reach 68° below zero. The term "chilling" is usually applied to export shipments and means sending beef at a temperature around 30°, which slightly stiffens it but does not produce damaging ice crystals, and permits the meat to be sold abroad as fresh meat. The ordinary distribution of meats
782 from western packing houses to eastern markets in the United States is accomplished in the "refrigerated" state, not "frozen" or "chilled." Only a small fraction of 1% is frozen in the ordinary sense. In packing house coolers and in refrigerator cars, the usual temperature maintained is 31° to 32°.

784 A new freezing process is now coming into vogue,
785 known as the Birdseye process, named after its inventor, Clarence Birdseye, an Amherst College man who developed it on the basis of observations originally made in Labrador while there on business of
786 his own with the Hudson Bay Company. The term "quick-freezing process" is used to describe any process intended to be limited to the development of the microscopic ice crystal which is so small that it does not break or damage the cell wall in the product frozen.

784 The process of quick freezing, so far as principle is concerned, has been the subject of a very, very considerable number of patents; but it has been only within the last few years, particularly within the last two years, that developments have occurred with sufficient rapidity so that it has become a matter of importance and consequence to the food industries of the country. Patents, both European and American, have been issued to half a dozen, and I do not know but a dozen, different inventors with respect to the preparation of foods by various mechanical processes which they have patented.

[fol. 926] This is because of the perfection of the Birds-

eye process, which differs from others in that it uses
786 a double contact machine, freezing the meat cuts from both sides, which is four times as fast as a single contact machine freezing from one side would be, using the same temperature. The rapidity of
825-6 the freezing process is not in proportion to the diameter but roughly in proportion to the square of the diameter. That is, freezing a package two inches thick will require four times the time to freeze a package one inch thick, though the thickness is only twice as great. For this reason, in my judgment any process operating from one side only has a very close limitation.

785 An investigation made by a numerous committee representing the Institute of American Meat Packers, of which I was titular chairman, made a first-hand study of the Birdseye process at Gloucester about 16 months ago, and they reported they could find no change in the color, flavor, texture, or firmness following such freezing or in any other characteristic except that the meats were made tendered by the process, probably because the microscopic ice crystals stretch, though they do not rupture, the cell walls.

786 The adoption of this process will, in the opinion of the most competent people in the industry with which I am familiar, make a revolutionary change
787 in the distribution of perishable foods of all characters and types. It will, in my opinion, open tens of thousands of new outlets for meat and entirely change the system of packing house operations. The slaughtering process will be merged into that of packaging in identifiable packages, with precise grading following government standards, leaving at the packing house the residual, much of which is wasted through distribution with the product to the retail trade in the form of fat and bone.

[fol. 927] Packages of quick-frozen meats will come to the retail grocer for sale in the same comparative
788 form as his rolled oats or anything else that he sells. After being so frozen, the product may be sent with great success from 500 to 1,000 miles under ordinary weather conditions, and with the use of cars varying from the salt ice car up to the silica-jell car it can
789 be sent across the continent without difficulty. Refrigerator manufacturers are working on the problem of developing the right kind of individual freezer and

display cases for handling this product in retail stores, so that after the goods are sent to the grocery store in an insulated container they may be put on sale in a display section without any diminution in weight, quality, or condition. This will enable the ordinary grocer to handle these products with only the additional cost of the electricity with which to operate the storage display unit.

793 Birdseye has no monopoly on the quick freezing process. I am quite familiar with half a dozen pro-
794 cesses and I am quite sure there are quite a number besides that. I do not see how the quick freezing process can be carried forward with any rapidity for the benefit of either the public or the packers or the stock raisers, unless all the packers have the same freedom of action with respect to retailing that the intermediate packers have and the chain stores themselves have.

793-5 The result will be a great reduction in the cost of cutting and retailing. The ordinary cost of operating a grocery store is about $2 per 100 pounds, while that of the retail meat market doing the usual custom cutting is three or four times as much. Under the new plan the cost of operating the meat section of a grocery store will be from 25 cents to $1 a day, according to the size and quality of the display case involved, and including its depreciation. Aside from this, the operating cost of the meat department would be the same as that of the grocery business itself. This will make it possible to offer meat in [fol. 928] thousands of new places. Further economies will be effected by permitting the food distributor to handle a diversity of lines, both because of the spread of overhead, such as rent, and the ability of salesmen to handle solicitation for meat, groceries, and fruit at the same time.

The installation of these retail refrigerator cases will necessitate additional financing, which would no doubt be one of the first activities of the leading packer, if he were free to do so.

790 This process is applicable not alone to fresh meats but to a very considerable list of fresh fruits and vegetables and fish. It will make possible fresh fruit and vegetables out of season instead of having to resort to canned goods. Any of these products may be kept a year

or longer in this frozen state, though as a practical matter they should be sold inside of a year.

791 The General Foods Corporation controls the Birdseye process, having paid $22,000,000 in cash for its patent, together with some assets. It is already being used to the extent of a small commercial plant installed in our place from which we have been placing these goods for several months in a limited list of stores in Springfield, Massachusetts, selected to furnish a cross section of the various types of stores found in New England; and from them we are now making about 3,000 sales a week.

832 Certain meat packers have been experimenting with some of the other quick-freezing processes. Swift has spent a lot of money in the past year and has installed freezing apparatus in their branch houses to get ready to receive the products for distribution to the retail dealers. I do not know what they are using, as they are naturally doing their developing privately. Armour has done a lot of quick-freezing research work but has never distributed any quick-frozen products, and neither Swift nor Armour has used the process on a commercial scale.

[fol. 929] Fish put through the Birdseye process immediately upon arrival at the wharf are much better when
792 served at St. Louis or Kansas City than others of the same lot caught at the same time and served at Boston 48 hours after arrival, because the flavor is preserved. Pampano, for instance, packed in Florida or the Carolinas under the old process is still sweet on arrival in Boston, but the fine flavor is gone. The quick-freezing process would remedy this.

Its use has had a great development in the fish business. A small plant in Gloucester belonging to the Birdseye company started offering its goods to people who were not distributors of meat at the time, and last September they sold 1,500,000 pounds of fresh wasteless fish, representing 2,750,000 pounds of fish as it comes in the trawlers.

793 This, I think, illustrates the value of the principle and what it will be eventually as applied to other fresh food, fruits, vegetables, etc. It has already produced a noticeable increase in fishing facilities. Where trawlers were being sold for lack of use at the close of the war, we have been building them since.

816 The quick-freezing process requires totally different machines from those now used at the packing plant. While the same apparatus may be used to produce cold for a freezing room as for a freezing machine, the difference is in the direct contact as compared with air contact, or between brine emersion at, say, 29° below zero as compared with putting it in ice. Quick-freezing requires a temperature of from 29° to 50° below zero. It will require an additional machine at the packing plant to perform this particular service, in addition to existing machinery. It will increase the cost at the packing plant with respect to freezing alone, not to exceed three fourths of a [fol. 930] cent per pound, including cost of operation, depreciation of the machinery itself, and all material
817 equipment. The cost of paper and boxes and the labor of cutting, etc., would be additional to that. But the economies in freight through elimination of waste, greater salvage value of the material left behind, and reduced cost of retailing under the grocery system, will make it possible to retail the product at as low or a lower price than obtains now.

819 The same refrigerator cars can be used in its transportation as at present, because it is not necessary to maintain constantly the low temperature required for its freezing. But present retail refrigerator facilities would be inadequate even if equipped with machinery to produce lower temperatures, as they are not insulated or designed properly for that purpose. Also there
825 must be showcases capable of carrying a temperature of from zero to 10° above, preferably zero, for the preservation of the product. Meats require a colder temperature than fruits or vegetables because of the fat content. Such cases will be turned out in large
819 quantities in a few months. In other words, the re-
820 tail store handling these products would have to put in new refrigeration and showcase equipment. Because of the more compact form of the product and the elimination of waste materials and the necessity of cutting, sometimes inside, these would not have to be as large as at present, and their cost in proportion to the volume handled, including the factor of rental value of the space used, would be materially less.

821-4 On the average, a store could be fitted up with the new equipment for one half of the present cost. If the quick-freezing process be applied to perishable foods generally, including fruits and vegetables, the equipment [fol. 931] necessary to handle a combined meat and grocery store of a given volume of business would cost substantially less both to install and maintain than that necessary to accommodate the same volume of business divided between separate meat and grocery stores. The re-
824 sult would be to impel all grocers into handling meats, or vice versa, both for this reason and because as shown by the chain stores it is attended by a marked increase in their grocery business. But it is easier for a groceryman to go into the meat business than for a meat man to go into the grocery business.

833 As to arrangements with those controlling the patents for the use of quick-freezing machinery and equipment, most of the machines with which I am familiar are sold outright, other than the Birdseye machine, and no policy has yet been announced with respect to that; but I have no doubt that all the high-grade concerns who apply, who do their work on a high standard, will be arranged with on some basis. There have been no arrangements with the packers in the United States up to this time, nor any determination of policy.

835 A new plate freezer has been developed and patents on it issued, ready to be put on the market when the whole plan is launched, which will carry eight series of freezing surfaces capable of freezing seven levels at once, with a self-contained unit carrying its own ammonia compressers, so that merely by connecting it with an electric plug and a water tap you can carry the freezing process on in a corner of this courtroom, making it completely available for the smallest as well as the largest plant in
836 the country. This is also covered by the Birdseye patents, as it is an application of the same principle and is likewise controlled by the General Foods Corporation.

[fol. 932] While the best use of the quick-freezing process requires slaughtering, cutting, freezing, and pack-
837-9 aging at the same plant by the primary packer, and shipment through direct to the retailer, the chain store might prefer to use it in processing alone at a little

extra cost in order to control their own brands and their own grading.

795 The handling of a diversity of lines by a food distributor results in a spread of his overhead and an increase of his custom because of the attractiveness to the purchaser. If a retailer sells $10,000 in a given period, his rent in relation to that $10,000 worth is one-half as much per unit as it would be if he sold only $5,000 worth. The economy of utilizing the services of a salesman for the selling of different products is one of the foundations of our business. We sometimes send out a salesman who sells a thousand different items. There has been a tendency entirely aside from the General Foods Com-

796 pany to combine industries. Standard brands have been developed contemporaneously with General Foods and they follow somewhat along the same lines, and other integrations are constantly taking place in food lines.

There is keen and active competition in both the buying and selling end of the meat business. Competitive conditions are equally keen in other food lines so far as I can observe. There is no control nor monopoly in any perishable lines of food and has been none, so far as I have been able to observe, in many years. There is no such

797 thing as price control of food by any one or any group. There is no such thing as price manipulation or control in the buying of raw products. In my opinion there is no present organization or group of organizations which have the ability to put food competitors out of existence. If there were artificial price maintenance in the meat industry, competition could arise on small capital. If you start in the flour business, you would have to have a good deal of capital for a flour mill, but any one who wanted to buy a hog could go out, as Morris did [fol. 933] originally, and buy a hog and cart it down to an open lot, kill, and retail it.

798 The establishment of the chain store system and centralized buying and distributing has created a lack of use in packer branch houses. Direct buying by chain stores in car lots and shipping to their own warehouses has made it quite unnecessary. As a result many of them have been closed up all over the country.

I would say that it is impossible under present-day conditions for any group of men in the food industry to ac-

quire a monopoly of the food industry of the United States. There is perfect freedom for them to buy and sell anywhere in the United States. It would not be possible any more than you could monopolize the fish industry. Any one who can get a vessel can go fishing and sell his product. Any one that desires to sell meat at any stage can go and get it and can sell it. There is no opportunity for a monopoly. I have been in the business, without going out of it at any time, for the last forty-three years,
799 and these conditions have obtained all that time. It has not occurred yet, and the conditions are such today that if there was any period when it was likely, it is still less likely than any other time previously during the last forty years. The things that have occurred within the last ten years to eliminate any likelihood of monopoly which might have existed are the development of companies leasing refrigerating cars and development of transportation itself, the control by the Interstate Commerce Commission of all conditions affecting transportation. If you have complete freedom of transportation under equal conditions, I have no concern about any other element which might come into the situation. In referring to the development of transportation I include the increase in good roads and motor transportation as a very important factor, but, even without that, the railroad situa-
[fol. 934] tion is so highly perfected now that it is utterly different from what it was thirty years ago; and to that has been added the truck transportation which, of course, is handling a very large percentage now of meat in suburban and urban centers.

831 I am of the opinion that the large packers should have entire freedom of action so that whatever method is desirable in their own interest to adopt with reference to distribution, that they shall be free to adopt it; whether it means to finance the retailers in the adoption of the new program or to associate themselves with them in any way they see fit to do. It is a very large, new venture, requires a large amount of capital, a large initiative and merchandising ability, and I think the packers should be free to do that work in whatever manner is best in their own interests and I conceive that to be in the interests of all parties, both the public and the stock raisers.

802 I am not an official of General Foods Corporation or of any other food corporation except Batchelder, Snyder, Dorr & Doe Company. For the last year our purchase of animals to be slaughtered on a custom basis has been nil, because the cutting loss has been so heavy that it has not been worth our while to pick up the custom cutting. It is to our advantage to purchase pieces of raw product in the quantity we want and carry that process forward rather than to take the whole carcass, because that involves us in the cutting loss process ourselves; we have discontinued it now for about two years because the losses have been so heavy and so continuous during that period.

803 I would say that 98 to 99% of our products are purchased from packers other than Swift and Armour.

By cutting loss I do not mean the wastage that comes in slaughtering an animal. If you should go into the mar- [fol. 935] ket and buy a hog and it cost you $20 and the hog cost to kill, chill and cut up, an additional dollar, it would then be a cost of $21; and if the resultant product at market value, say, the lard value and the legs which become hams and the bellies which become bacon and the other parts were worth when you finished $19, you would have made a cutting loss, and your only opportunity to recoup would be in the rise in the value of such percentage of that hog which was put down for a cure as might be sold when it matured at a price sufficient to correct the situation. That has been the hope of the packer, but it has not been a highly successful situation in the past two or three years. More than half the time since the close of the Great War there has been a cutting loss on the

804 part of the packer. The revenue from by-products is all taken into consideration in arriving at the cutting loss.

808 Batchelder, Snyder, Dorr & Doe Company does no retailing but sells its products to meat markets, chain stores and the wholesale consuming trade such as hotels, railroads and steamships. I would estimate that about 10% of the Company's sales are made to chain

809 stores, and I would estimate that from 2½ to 5% of our output goes to our leading chain store purchaser.

839 We have considered going into retailing but have not thought it desirable because it involved going into the grocery business, with which I am not familiar. This would be no objection to the large packer, because he could develop a complete independent organization
840 if he cares to do so. They have the advantage of distribution facilities superior to those of any other organization in the country, covering the country in a network with about 1,000 branch houses between Armour and Swift together, and a complete merchandising organization ready to add additional items with almost no additional cost, at least relatively small additional cost. Also they are located at strategic points to service the congested areas of the country.

[fol. 936] Movement of perishable commodities in refrigerator cars is faster than that of less perishable
841 commodities, either in merchandise package service or refrigerator package service, although I am not familiar with the details of the movement.

About 10% of our business goes to chain stores, which we consider a less desirable class of business because of their concentrated quantity buying. The sales price almost always averages lower than it does when the busi-
843 ness is more widely distributed. We do not, however, consider our chain business a menace to our business. It is useful as an overhead spread as is any added business of that sort that can be brought in at a gross profit higher than the inescapable or base cost of the business. While the unit profit on our chain store sales is not so great, what we do make is a recoupment of so much on total costs. Even if it is necessary in some cases to sell to them below total cost, it is still a gain so long as it enables us to make some recoupment on fixed charges.

The greater part of our raw materials is purchased from independent or smaller packers, from whom we get a lower price on the average than from the four big packers, because the latter ordinarily do their own distributing while the smaller packers are always seeking, some of them, an outlet for a surplus which they cannot dispose of in their own territory at fair prices, and it is better to sell to us out of their territory than to cut prices in their territory.
849 The advantage in the branded article is that confidence in the mind of the buyer in a brand which has

once been purchased and tested and found to be excellent. They go back to it again, because experimentation is unnecessary. This advantage exists in favor of a branded article as compared with an unbranded article and
850 when the buyer compares one brand with another the [fol. 937] factor of comparison is the buyer's own judgment. One he may prefer to the other, and if so, he afterwards buys the one which he prefers. In any case, he has to examine it and the unbranded article, the bulk article, he is quite satisfied that it is going to vary from time to time, because there is no special incentive to keep that uniform. I think the chief value of a branded article is that there is comparison to an unbranded article rather than a comparison with another equally advertised branded article of the same sort. The advantage to the chain
851 stores from the control of their own brand will not disappear as a result of the development of the quick freezing process. They would probably sell a certain amount of Swift Premium and Armour's Star porterhouse steaks, but they would sell their own, and their own clerks would always press the sale of their own products, with the result that undoubtedly the great bulk of sales would
852 remain in the hands of the brands which they were pressing, rather than the outsiders. That is illustrated with their sales of hams and bacon today; practically—not a matter of theory, but a matter of demonstration.

853 The keen competition existing in the food industry exists in the retail field as well as the wholesale. The independent meat packers are able to secure more per pound for their products than the large packers and the reason is obvious. The intermediate independent, large, amply capitalized, concern of the kind you refer to find their business chiefly in the territory contiguous to their plant. He sells his merchandise. He does not consign it. The senior packers, operating nationally, sell, so far as they are able to do so, but they are compelled to do two [fol. 938] things which the other man escapes. They are compelled to clean up the surplus of material which comes to the central marketing areas, and they are com-
854 pelled also to consign a very high percentage of their product to their distributing houses and sell it against local demand conditions. They can not create

demand. They can only supply it. When they send an excess to the market, and that sells for less than it sells in Chicago, then their average is pulled down to that extent. They perform a service to the producer by that action. They have also kept their own plants operating at something approximating normal capacity, which is also another economic necessity for them, but they pay a price for it in the reduced income that they get from their goods shipped east. That is a serious handicap to these senior packers.

Mind you, when I take this position in which I feel
855 that the present situation is improper, in view of the very radically changed conditions, both with respect to impending developments and those which began four years ago, but are continuing to expand, I am saying that against my own personal interest. But I think in the long run, we suffer from the lack of a fair field and no favor principle. I think we all will get on further and be further 25 years from now if in the interim we work on the principle of a fair field and no favor rather than have part of our organizations in this country shackled. I think it is inevitable that these new conditions of distribution will entail a multiplicity of new problems which will affect the defendants very markedly. They should be free to deal with them.

Referring to my statement that there is a necessity of the big packers cleaning up the live stock market there are two things which compel them to do this. First, I would say that the eastern order buyers, or the away-from-the-[fol. 939] central market order buyer receives his orders from the small eastern packer to buy so many hogs of such a weight, and he buys them. He steps in because he receives his commission, regardless of what he buys. He buys them as well as he can, but he buys them. After that, the larger packers come in, according to their own needs, and what they consider in relation to the state of the market with reference to values, and receipts, and so
858 forth, and buy as they see fit. When the general orders are satisfied, there may in time of surplus be a very considerable residuum which really is not wanted. However, they must be purchased, because, otherwise, the whole stock raising business would become demoralized. You have got to have an outlet for these perishable goods, because I cannot quite conceive those hogs which are sent east being sent back again to the farms, without demoraliz-

ing the whole stock raising industry. When the packer buys those hold-overs, he gets them at their fair market value, as against the same type of competition of fair market value that the other packers, big enough to handle them and willing to handle them offer. The competition may not be as keen as it would be among the prime goods, any more than the small apple competition for them is as
859 keen as it is for the fine. The price at which this hold-over goes is simply a result of the law of supply and demand like that affecting any other live stock. The packer expects to be able to handle them, but, remember, he is going to cure one-half of the product, and it is in the lap of the Gods what will happen to them when it comes out of cure. The big packer is not under compulsion more than any other packer to buy live stock at any time unless his business judgment indicates he can handle it advantageously, but as a practical matter, he has bought it steadily and consistently for the last forty years, with which I have been familiar.

[fol. 940] I do not know to what extent the chain organizations do processing of meat. It is being done by
860 the First National Stores of Boston. They have equipped their plant with equipment for which they spent one and three quarter million dollars, and they have put in curing facilities, but to how great an extent they are using it, I do not know. Of course, slicing, boiling, in addition to curing, are called processing. This is done by some of the chain stores and not by others. There is no uniformity or rule about it. They are also running factories of various sorts other than in the meat business as an adjunct. Processing is a part of the function of the packing houses.

861 In addition to organized chains, there are voluntary chains, that is, groups of proprietors who have organized under a chain type of grouping of certain interests which they have in common for the centralized purchase of merchandise to correspond with the centralized purchase of proprietary chain stores. In the voluntary chain the proprietor retains his independence but at the same time takes advantage of all the chain store elements they can incorporate in their voluntary organization, including advertising, window display work, studies of merchandising, rapid stock turnover, etc. This move-

862-4 ment has grown quite steadily in recent years as a neutralizing factor to the development of the proprietary chain business. I think we are only on the threshold of chain store development. If it continues as in the past four years, as I should suppose, it will continue to diminish the amount of merchandise going through packer branch houses, and, further reducing the spread of [fol. 941] their overhead, and decrease the relative importance of the senior four packers as compared with the intermediate packers, because the intermediate packer can ship carloads of meat to chain store smokehouses just as well as Armour and Swift can, and it will mean a constant movement toward retrenchment on the part of the packers to protect their capital. They must find new methods to deal with the situation or change their whole method, because they cannot go on unendingly with the rising tide of business diverted from them and not make changes to meet that situation.

866 The only salvation for the big packer is to fill up his obsolete branch-house facilities to capacity by handling other lines and having freedom to move the same as the next hundred packers do. While mere freedom will not fill a branch house, if they are free to do as the next hundred of their competitors, they will find a way that will make it uncomfortable in three of the seven departments in our business in those respects in which we are now protected by this Consent Decree. We are selling three of our seven lines of merchandise protected against the four large packers by this Consent Decree.

864 The small packer can operate more advantageously than the big packer because the big packer undertakes functions which the small packer sidesteps just the same as I sidestep them in my busi-
865 ness. I let him carry the burden. The branch house is an illustration of that. There are 1,000 branch houses for the convenience of these others. It was a highly desirable thing for years, because it placed properly slaughtered merchandise, very well dressed, properly refrigerated, at central points all over the United States, for the convenience of the independent market man. But that thing has changed, of course, because even through volun-
[fol. 942] tary chains, under their management, they are now beginning the independent purchase of carload lots of mer-

chandise which was formerly distributed through these branch houses and are distributing themselves among their own membership. The branch houses are a corollary of the fact that the large packer is so large. It was one of the instruments for development when that was the sound policy to follow. It would have remained a sound policy had it not been for the development of the chain store business—a very sound policy. The branch house is still necessary to supply the remaining independent dealers who are still utilizing their services. But it grows increas-
866 ingly less consequential as less demand is placed on it, because of the change in the merchandising methods.

867 The adoption of the quick-freezing process will not stop the diminution in number of branch houses,
868 because by the elimination of waste products the same volume of meat can be handled to the consumer
869 in 20% less bulk. Of course if groceries are handled through these branch houses that will withdraw them to a degree from the existing facilities of distribution, and branch houses now employed in handling them will either become superfluous or available for something else—available to sell to somebody for salvage or other uses.

STIPULATION RE TESTIMONY

In lieu of separately stating such testimony, it is conceded that the following described witnesses, numbered 30 to 41, inclusive, testified generally to the effect that there have been a number of times in the last eight or ten years when it has been necessary for livestock producers to dis-
733 pose of their products below cost of their production; that cattle production is not being carried on
733-4 profitably this year, in the growing areas, at least. 1929 was a good year, 1927 and 1928 were pretty fair; for three or four years beginning with 1921
1039 conditions were very bad, with forced liquidations, many forced out of business, and others taking [fol. 943] tremendous losses. That the livestock producing industry is injured by excessive shipments to the livestock market at certain times of the year and the inability of its meat food products to move through retail outlets to the

consuming public. One reason for this is believed to lie in the large spread between prices of livestock on the hoof and retail prices of meat products therefrom. There has been a great increase in this spread since the pre-war days, principally during the war and one or two years following; and that the spread has increased steadily and gradually since 1913; that the retailer claims these increases are necessitated by his increased costs in every direction. The greater part of the increase in spread is between wholesale and retail prices, rather than between livestock prices and the wholesale prices of its products. Another reason is believed to exist in the failure of retail prices to respond promptly to fluctuations in wholesale prices, especially movements downward. It is believed that if leading meat packers were permitted to retail their own products; this condition would be alleviated. It is difficult to say just how this would come about, but it is believed to be to their interest to make prices such that their stocks will move promptly through to the consumer. It would also help if they could retail non-meat lines along with their meat lines, as the increased volume of business per store, and their more economical transportation and distribution, would lower the cost figure to be charged against the meat business. Wholesale prices follow livestock prices quite closely.

It is also believed that the existing conditions would be alleviated and that live stock producers would be benefitted if the large meat packers were permitted to handle at wholesale other food products in addition to meat, so that meat alone would no thave to bear the entire cost of distribution.

The live stock producers receive prompt and reliable information respecting market conditions, receipts, trading [fol. 944] and prices of live stock of the character dealt in by them and this enables them to select their own markets and times to make shipments to the best advantage to themselves to the extent that such selection is practicable in the live stock industry.

In addition to testimony above summarized, the witnesses therein specified testified as follows:

716 (30) F. E. Mollin, Secretary, American National Livestock Association, Denver, Colorado, testified:

This is a national association principally of range cattle growers, embracing 14 smaller state associations (all in the West), and many local associations and breeder organizations. Prior to my connection with it, I was for 32 years with the firm of Kent & Burk Company, large ranchers and feeders of cattle and hogs, in Nebraska. While the
718 great percentage of livestock raised in the United States is raised in the west, the great percentage of it is consumed in the east.

722 At my request, the Division of Cooperative Marketing, of the Farm Board, has prepared some data as to comparative prices of wholesale and retail cuts on the Chicago market, from 1920 to 1929. This is con-
725 tained in Petitioners' Exhibit 61. The first column shows prices of good to choice steers on the hoof, while the following columns show prices of wholesale and retail beef cuts.

734-37 I am familiar with marketing conditions on public stockyards markets from personal contact, particularly at Omaha, where I lived 16 years; also from personal observations at Denver and Chicago. The Omaha yards were considered packer-owned until a few years ago. I have also had contact with handling livestock on yards owned by others than meat packing concerns. I think there is very little difference at the present time in
735 handling livestock on the two types of yards. We [fol. 945] generally get good service at all of the public markets now. I think, however, that meat
734-37 packing concerns should be restricted from stockyard ownership in order to provide a neutral trade grounnd on which the buyer and seller meet. We think they should not own stockyards in which we are forced to send our cattle for sale. If they should again become very dominant in the trade, there are many things that could happen in the way of encouragement of rival concerns to come to the market, and things of that kind. The more competition we have the better, and if they were to take unfair advantage, as they possibly might, it would hurt our industry. Aside from that there is something in the question of allocation of receipts. At a market like Denver the packers kill a somewhat limited number of animals, and when the receipts of lambs, for instance, are heavy, they forward them to other markets. It is in their power to send them to a number of other markets, and if they wanted to send

them to a market where they owned the yard, just to kill them there and get that little advantage out of them, it might tend to depress that market. I think it is better for the livestock industry that there be an absolute neutrality so that there is no influence bearing on the question of where the receipts go. Our great problem is an orderly market, and we can work that out better if we have nothing
736 of that kind with which to contend. No particular advantage would accrue to them in shipping to their own yards rather than to another except in the mat-
737 ter of saving in yardage charges. It would at least at certain markets. I do not know that the yardage charge is always charged to packers on direct shipments. I think there are some markets where there is no charge [fol. 946] on direct shipments and others where there is. There would be just a little incentive to them to put too many lambs on that particular market, whereas if they had no stock yard consideration in mind at all, they would consider killing facilities and the matters that pertain strictly to the packing business.

1013 (31) WAYLAND MAGEE, Douglass County, Nebraska, testified:

I am the manager of a 1,280 acre farm owned by my family near Bennington, Nebraska, and have an interest in a 3,000 acre ranch in Wyoming. I am president of the County Farm Bureau in Nebraska; president of the Nebraska Crop Growers Association; director of a Federal Reserve Bank at Kansas City; and on the board of Ak-Sar-Ben Stock Show at Omaha; and on the executive board of the Nebraska Dairy Development Society.

1026 I should say that competitive conditions were
1027 present on the South Omaha market. They have been called keen there. I think that is a very descriptive word. There is a lot of competition. So far as I have been able to observe, it is keen. There
1032 are many buyers on the Omaha market. We sell, of course, to packers and even to speculators, who buy in the course of a year many times the volume that we have to sell; but we do not consider this buying power any particular injury to us.

Entering into the cost of producing our livestock, we have our capital investment, in land, equipment, machinery, buildings, etc., used on it, besides the cost of labor and other operating costs. Our fixed charges, such as interest on investment and properties, of course, runs on, no matter how little we produce; and also some of our operating costs, depending on crop failures. If we should cut down the number of livestock in our herd 50% or 75% in a [fol. 947] particular year, that would reduce very little the cost of labor necessary to handle it. In order to make a profit we have to get a price for our products sufficient to cover both operating costs and fixed charges. But so long as I could continue producing and sell for enough more than to cover these operating costs and recoup something on fixed charges, I should do so. The continuation of production does not depend alone upon our ability to make a net profit over and above total costs, including both fixed and operating.

1035 (32) WILLIAM H. TOMHAVE, Executive Secretary, American Aberdeen Angus Breeders' Association, testified:

This is a pure bred livestock record association, with over 5,500 members throughout the United States, and a few in Canada. Our total membership probably owns around 100,000 pure bred cattle, and another 100,000 grade cattle not registered; also another 150,000 commercial Angus cattle. I was one of the founders of the Better Beef Association of America; and since 1924; a member of the Livestock and Meat Board.

1037 I graduated from the University of Minnesota in 1907 and was assistant in Animal Husbandry at the Pennsylvania State College in 1908, and live stock expert to the Chinese government from 1908-1910, and live stock extension work in Minnesota 1910-1912, and Professor of Animal Husbandry at the Pennsylvania State College 1912-1925, and since 1925 secretary of the American Aberdeen Angus Breeders Association. I devote practically all my time to the performance of my duties in connection with the secretaryship. I wrote and have published a book entitled "Meat and Meat Products," published in 1925, and it is used as a textbook in a number of agricultural colleges. I

am located at the Union Stockyards at Chicago and I try to visit the market as often as I can and naturally keep posted through the market reports and trade journals. In addi-
[fol. 948] tion to that, I have had considerable experience in marketing live stock while I was connected with these several state institutions, because we always had
1038 experimental cattle and hogs and sheep in connection with our experimental work that had to be
1044 marketed. I was one of the founders of the Better Beef Association and since 1926 have been a member of the National Live Stock and Meat Board.

1038 From my observation of the selling of live stock on the public market, I have found conditions very competitive. I believe there is lively competition so far as the buyers have an outlet for the product of the live stock which they are buying.

I have never been engaged in the business of producing livestock on a commercial scale.

1055 Petitioners' Exhibit 67, received without objection, contains statistical information prepared by the Bureau of the Census as to agriculture, based on the census of 1930, similar to that contained in Exhibit 31 as to the census of 1925. It shows 6,297,877 farms in the United States as a whole, April 1, 1930.

1540 (33) MURDO MACKENZIE, Manager, Matador Land & Cattle Company, Ltd., Denver, Colorado, testified:

This company is in the cattle business and operates ranches aggregating about 1,097,000 acres in Texas and Montana. After branding and marketing what we intend to, we will have at the end of this season on our ranches about 54,000 cattle and 10,000 sheep. For two years I was president of the Texas and Southwestern Cattle Raising Association and am now an ex-officio member of its board.

1545 (34) J. F. WALKER, Secretary and Field Manager, Ohio Wool Growers Cooperative Association, Gambier, Ohio, testified:

[fol. 949] This organization comprises about eight thousand sheep men in Ohio, Michigan, and Indiana, owning

among them about five hundred thousand head of sheep, who are so organized for the purpose of merchandising their product. I also have a farm near Gambier with a flock of about four hundred pure-bred sheep, and am consulting specialist on wool marketing in the Bureau of Agricultural Economics. Our association also handles about four million pounds of wool annually direct to the mills and is affiliated with the Ohio Livestock Shippers Association, also a livestock producers' cooperative handling lambs and mutton, to which our members turn over their product of that class.

I visit the various markets contiguous to our territory. I travel quite a lot with the representatives of the
1548 cooperative commission houses in those markets and get radio reports daily when I am where I can receive them and carry this information out and talk with the producers on the subject to inform them. Our members sell most of their live stock in Cleveland, Cincinnati and Pittsburgh and some at Buffalo. The competition in the sale of lambs and sheep, we believe to be very keen and fair. There are times when the competition is limited as is true of any business because of the lack of demand. It may be slight but then we find that there are always several men who are anxious to get the products.

1555 I have never been a retail butcher, but have operated a retail grocery store in which we handled some meats, but no fresh meats.

1557 (35) W. F. RENK, Commissioner of Agriculture for the State of Wisconsin, Madison, Wisconsin, testified:

I have a farm at Sun Prairie, Wisconsin, about twelve miles from Madison, and a feed yard at Columbus, about twenty miles from Madison, embracing about four hundred acres altogether, on which we raise pure-bred sheep and lambs which we sell mostly on the Chicago market.
1558 I raise and market about 12,000 lambs each year and one or two carloads of hogs. Most of it is sold at [fol. 950] Chicago though we sell some of our hogs to Oscar

Mayer Packing Co., at Madison. We have found that when the Chicago market is in good condition there is plenty of competition from different packer buyers and also
1560 from order buyers in the East. Our lambs are usually well fed and in good condition when they come to the Chicago market and usually two to four or more packers are bidding on these lambs and a great many times order buyers from the East.

1557 I am past-president of the American Shropshire Association, American Hampshire Sheep Association, Wisconsin Livestock Breeders Association, and now president of the Wisconsin Breeders and Sheep Feeders Association.

1561 There are forty-four retail butcher shops and thirty or forty chain stores retailing meats in Madison, Wisconsin, a city of fifty-five or sixty thousand. If the number of retailing agencies were reduced to from one fourth to one sixth of the present number, so that solid trainloads of refrigerator cars could leave large centers like Chicago and drop in one or two cars at cities along the line, distribution could be made much cheaper and overhead would be much less, because ten shops could distribute quicker than seventy or eighty and it would not be necessary for three or four different agencies to cover the same streets in delivery.

1564 If the same facilities were used for the distribution of groceries and canned goods as for meats, orders for the two could be taken together and it would be done cheaper than if selling meats alone.

I have never operated a retail butcher shop or grocery.

[fol. 951] (36) JAMES TOD, Maple Hill, Kansas, testified:

1573 I have a four thousand acre ranch in Kansas and seventy thousand acres in New Mexico, on which I carry on a business of breeding and feeding livestock, marketing about fifteen hundred head annually. These are raised on the range in New Mexico and most of them shipped to the Kansas ranch for finishing and feed-
1576 ing, then marketed principally at Kansas City. I decide the number of cattle to be shipped and select the market. That is governed by no one but myself. I sell

principally to Kansas City and frequently go to market myself. My cattle have been sold to very good advantage, I think considerably better than I have heard some reports made. We have always had good competition down there. Some days we have more than others. At times we only have the four large packer buyers but occasionally we will have a good many order buyers for eastern orders come in and when they come in it is still more to our advantage than when they do not. Some classes of feeders
1581 are sold in competition with packer cattle. They have to carry what we call a good deal of flesh. In other words they have to be fed enough to make beef or reasonably good beef, but the thin cattle do not come into competition. In the early fall of 1929, the feeders were coming in and competing very strenuously with the packers on the purchase of these what we call two-way cattle, cattle that can either go into the feed lot for further fattening or cattle than can go to the packer. This year that competition was absent to a great extent in so far as the feeders were concerned and there were a number of cattle marketed this year and are being marketed now which in the ordinary course of events should go to the feed lot but are being sold to the packer.

[fol. 952] In 1921, we made a profit. 1922 was approximately even. 1923 was a serious loss. 1924 was a
1584 slight loss. 1925 was a fair profit. 1926 was a fair profit. 1927 we made a little money. 1928 we made a lot of money. 1929 we made a reasonable profit, and in 1930 we are taking a loss; but it would still be advantageous this year to continue to raise cattle.

1587-8 The big end of our capital is tied up in the form of grass, and there is no way we can realize on our property except through the means of cattle. It might be done with sheep, but I do not know anything about sheep. We have had some years when we would have been better off to have paid our taxes and other overhead and not raised anything, because the price did not cover the cost of actually handling the stock; but this year it is still
1584 advantageous to raise cattle in spite of our losses,
1588 because we cannot get out from under.

1589-90 We can cut down on our feeding operations some, because we can always stop buying feeders, but we cannot stop cows from having calves, and when

these calves grow up we have to ship them up to the Kansas Ranch and fatten them for the market.

1590 (37) R. N. GUNN, Buckingham, Iowa, testified:

I am a livestock farmer with about fifteen hundred acres in central Iowa, and am chairman of the National Board on Swine Production Policy, a member of the livestock committee of the Federal Farm Board, and one of the directors of the Farm Bureau Federation in Iowa. I raise hogs and cattle and market them principally at the Rath Packing Company, Waterloo, Iowa, where I truck them in direct to the plant under an understanding that they will give me fifty cents less per hundred than the price on the same [fol. 953] grades on the Chicago stockyards at the time, the difference being equivalent to the extra shipping
1594 cost to Chicago. I am familiar with the Chicago market. We have always felt as though we had a competitive market. We had the packers and we had the eastern shippers and the smaller packers. They are all on the market. They compete with each other as nearly as I can see. All classes of buyers and packers operate on the Chicago market and my observation is that there is competition between all of them.

1596-7 Certain researches made by economists in land grant colleges, with whom I have been in contact, developed that fifty-three million hogs slaughtered under federal inspection in 1922 brought $905,000,000 or $222,000,000 less than forty-one million hogs slaughtered under federal inspection in 1924 and 1925, which brought $1,127,000,000.

1604-6 Economic studies embracing nearly a twenty-year period, by Warren and Pearson of Cornell University, have shown that a five per cent reduction in the price of meats to the consumer has increased consumption around twenty per cent. I do not know whether the facts on which these studies were based involved a simultaneous drop in other food prices or whether it was a matter of meat prices alone falling and thereby tending to
1607 draw consumption away from other foods.

1619 (38) W. J. Fitts, Gallatin, Tennessee, testified:

I am a livestock farmer, raising cattle, hogs, and sheep. The hogs I market mostly at Nashville and the cattle at Louisville. I am president of the American Duroc Jersey Association and a director of the National Swine Growers Association.

[fol. 954] (39) James A. Hooper, Salt Lake City, Utah, testified:

1624 I am secretary of the Utah State Wool Growers Association and manager of Austin Brothers Association. The latter is a concern engaged in the producing and feeding of livestock and farming in the states of Utah, Wyoming, and Idaho, running around twenty-five thousand sheep and twenty-five hundred cattle, with about forty-four thousand acres of grazing land, and marketing ten to fifteen thousand sheep and fifteen hundred cattle annually.

The wool growers association embraces between two and three thousand wool growers, with about a million head of producing sheep, approximately fifty per cent of the sheep population of Utah.

Most of our cattle goes to the feeders, some to the packers. Most of the sheep and lambs goes direct to packers, who come into these states and purchase for their plants, and move principally to the Pacific coast.

1626 Representatives of the various packers such as Swift, Wilson, Cudahy, Hauser, Standard and other packing concerns come into Utah and Idaho and compete very vigorously with the purchasers of the fat lambs in that particular section, starting in August and buying those lambs up until along in April.

1627-28 We have probably 69 to 70% of the population living east of the Mississippi River. We have about 69 or 70% of the live stock production west of the Mississippi River. It is very difficult for us to move our live stock to the section that is far removed from our fields of operation to market that live stock. In doing that we appreciate very much that our retailer is our only outlet. Were it not for the retailing of live stock, we would have our live stock on our hands and it would be unnecessary for us to continue in business. The natural flow of live

[fol. 955] stock has been to the packer and the packer has then disposed of our live stock as best he could. If we could shorten that route through efficient handling and the best minds of the country, by reason of that efficiency could get it to the consumer at a lesser price, there would be a greater consumption of our live stock and it would not only help the consumer but a part of that would be reflected in the price which we receive. We further feel that there should be no obstacle placed in the line of marketing our products. No other agricultural product is burdened with regulation, rule or law in the marketing of their product and it is free to be marketed. But with a regulation or rule confronting us whereby the men who manufacture or process our live animals are prohibited from placing that product through their own retail stores, it entails a greater cost in getting it to the consumer. And it also takes away from us one of our mediums of putting our products into the hands of the consumer.

My observation has been that it is next to impossible for a retail meat market to do business unless it has other products. The old meat market without selling groceries and related commodities seems to have disappeared especially in our section. It takes the two, in most instances, to make a go of it. We feel that it would be much better if the two could be handled with one overhead and that it could be more economically done.

1638 I think the gluts in the meat market could be removed if some of the larger companies of the United States who are processing meats were disposed to have their own retail stores because it is a known fact that the fat lambs can only be held in the coolers for a limited number of days and if the buyer sees that these carcasses are deteriorating, they sit back on their haunches and wait [fol. 956] to buy them at a very much reduced price which causes peaks, and if a packer owned a retail store they would start to try to move these at a more nearly average price throughout the entire period.

1630 Eighty-five per cent of the livestock that reaches the big markets of the United States is slaughtered by packers who are prohibited by the Consent Decree from selling our products in a retail way. This takes a medium away from us in the handling of this livestock to the retail trade.

1631 I think it would also help for others besides the leading four to retail their own products, but they have not the facilities distributed all over the United States to do it as the others have, and for this reason, also because of their large size, the leading four would be able to do this cheaper and more profitably to themselves than the rest.

Among the smaller packers, Fry in Seattle has done retailing to great advantage, although I don't know what profits he makes or what advantage he derives from it. The Butte Butcher Company has also done this.

1641 We have hundreds of thousands of acres of land in the west that is worthless except for the production of livestock, and we can afford to produce it there and pay the freight east as cheap or cheaper than it could be produced in the east.

1645 (40) J. H. MERCER, Topeka, Kansas, testified:

I am secretary and general manager of the Kansas Livestock Association, Livestock Sanitary Commissioner of the State of Kansas, president of the National Livestock Show at Wichita, director in the American Royal Livestock Show in Kansas City, and also of the National [fol. 957] Livestock and Meat Board. The Kansas Livestock Association embraces about 11,500 members, 80% of the beef animal population, and 65% of the hogs and sheep in the State of Kansas.

1648 Kansas City is the principal market of the members of the Kansas Live Stock Association. I find that there is a very competitive situation prevailing. It is more pronounced of course on the larger markets than the smaller markets, but at such markets as Kansas City, we have competition in beef animals of eastern order buyers. We have competition from the smaller packers who are located in the territory tributary to that market, and we have the competition of the larger packers who buy on that market. I think all of the four principal large packers have slaughtering establishments at our Kansas City market. Of course we have competition more keen at times than others in a class of cattle that is fairly well finished for beef. Competitors come into the market for such cattle to go

onto the feed lots to finish, to feed, 60 or 70 or 90 days, make them a better food animal and a better beef animal. Competition as I analyze it—altogether I have been a shipper to the Kansas City market for very nearly 40 years—I have always noticed that there is plenty of competition, uniformity of prices some times, especially when there is what has been referred to here as over-supply or gluts on the market.

1059 (41) WINCHESTER P. WING, Secretary, California Wool Growers' Association, San Francisco, California, testified:

I graduated in Animal Husbandry from the University of California in 1920, and in 1926 received a degree from Stanford University. I also worked on ranches, and taught school in Arizona; later handled hogs and became interested [fol. 958] in dairying, pure bred livestock and sheep.

California produces about one-tenth of the lamb
1062 supply of the United States, and out of its population of 3,900,000 sheep our members represent 2,900.000.
1061 Eighty-five per cent of the lamp crop of our members is sold F. O. B. Shipping point instead of shipping directly to a stockyard. Our people sell to the so-called big packers, Swift, Armour, Wilson and
1062 Cudahy, and to packers in San Francisco and Los Angeles; sometimes packers from Seattle and Portland and sometimes speculators come out from the middle west and our lambs are even sometimes purchased by packers east of Chicago. There is the greatest of competition; that is, with the four packers buying direct from the producers and with the local packers in California buying direct or at the stockyards. It gives the grower the
1063 greatest opportunity in marketing his product. The grower also has an opportunity if he is not satisfied with either the live stock markets at San Francisco or Los Angeles, or the offers made for his product f. o. b. shipping point by these 25 or 26 buyers, of shipping his live stock direct to the largest markets of the east, St. Joseph, Denver, Ogden, Salt Lake City, Kansas City, Omaha and Chicago.

Sheep production in the last eight years has increased
55% in California, and 30% to 35% in the United
1064 States as a whole. Their price has dropped from 35% to 42% in the past year. Due to a serious out-

break of foot and mouth disease in 1924, practically the entire nation put embargoes against the shipment of
1066-7 live lambs from California, with some 400,000 ready for market on our hands. The large packers came to our help, took them over at practically the same price as the year previous, killed them in the state and shipped out the dressed meat. If they had not done so, they could not have gotten these lambs, and as California is the principal lamb producing state, would have been de-
[fol. 959] prived of one of their important sources of supply.

We immediately went to the packers who are
1067 under Federal inspection and asked them if they would assist us in killing those lambs in California and then shipping the lambs out as dressed lamb. Every large packer agreed to help us and did so and the prices as a result that the growers received for his spring lamb crop in that year, even though we had changed our system of marketing overnight, was practically the same as
1068 the year previous. This was, in our opinion, the finest showing that the packer is interested in the grower, because there is no doubt in our mind that the so called large packers who had the whole thing in their hands, if they had been trying to reap an immediate profit, they would have bought those lambs at half the price they did. There is no question about that. But they stood right with us and told us at that time when we first went to them "we will do our best to get all we possibly can for the producer of these lambs." This was only possible by marketing that crop as they did and it was only possible to do it through the so-called large packers because of their distributing system and their methods of handling the dressed lamb when they got them to the East through their car route and branch house system.

1087 We believe a packer if allowed to handle canned goods with his lamb can have more car routes and can put more cars on his car routes in order that he may reach the small suburban towns or country towns and furnish the public with better lamb than is obtainable there. If a packer is enabled to distribute canned goods in the refrigerator cars with his meat, he has reduced his overhead. The same salesman who sells his canned goods sells his meat. If a packer starts a car route from San Francisco

going up the north coast and because of lack of volume has to open that car at 30 miles out of San Francisco, he has a higher transportation cost per unit of meat sold than he [fol. 960] would if he had larger sales in that territory and did not have to open that car and could, therefore, get the carload rate as far north as say, 90 miles from San Francisco. Therefore, he has cut down the per unit cost of handling that lamb. The added volume that comes
1088 from handling meats and groceries together enables him to send his peddler car a greater distance before he reaches the break-bulk point and for this distance he gets the carload rate as distinguished from the peddler car rate if he breaks bulk. So there is a definite saving to the packer in the use of refrigerator cars on a car route basis in the handling of meats and groceries combined as against the packer who handles the meats alone, or against the person who handles groceries alone.

1082 Seventy per cent of the lamb consumption in the United States is in the district north of the Potomac River and east of Pittsburgh; 15 per cent is in California, Oregon and Washington and that leaves a very small percentage for the rest of the country. In these
1090 sections of the United States where they are not consuming lamb and where we believe that through cooperation of the packer, if the packer is not fettered in his distribution and in its marketing of lamb, we could reach people who could not afford other meats and they could be eating lambs today. When I say fettered, I mean the packer's inability to retail and also his not being able to handle canned goods.

We have carried on cost production studies, and find that labor today constitutes about 30% of our meat cost,
1094 feed another 30%; the remaining 40% is depreciation and other fixed costs.

As the producing life of a ewe is about five years, we have to write off one-fifth of our property value in a herd as depreciation each year. If we curtail our production 50% that does not curtail the fixed charges correspond- [fol. 961] ingly. They go right on. We try to sell at a price that will leave us a profit over all these costs; but if a sheep man thinks prices will not permit him to ship his old ewes to market at a profit, he is likely to keep them on the ranch, which will actually increase his production the following

year, at least if we have an open winter. Thus, it is possible that a drop in price this year may mean that
1096 we will have as many lambs next year as today. On the other hand, if we have a severe winter and the old ewes die off, it will lessen our lamb crop. The accident of weather is a very vital factor in the sheep business in the west. With prices of farm commodities as they are
1097 today, one may continue and increase his number of sheep, because he is losing less on sheep than on other farm activities—particularly in the east.

870 (42) TYLER F. SNODGRASS, Vice-President and Director, and executive head of the Meat Division, McMarr Stores, Inc., Denver, Colorado, testified:

This is a chain store concern organized in January, 1929, as a combination of the Snodgrass Food Company and 25 other small independent chains operating from Denver to the Coast and from Canada to New Mexico.

872 The combined chains ranged from five to 250 stores each, and the present McMarr Company has 1,497 stores, in 487 of which we operate retail meat departments.

874 Our gross sales in 1929 were $87,000,000; our net worth $11,000,000, including capital and surplus; and our profits 2½% on sales.

875 We manufacture our own butter, ice cream, and bread; roast coffee and package tea; but do no slaughtering and only a little slicing, and packing hams; but practically no processing. We have about 20 grocery [fol. 962] warehouses; but only one meat warehouse in Denver.

876 Petitioners' Exhibit 66 is our balance sheet for the year ending December 31, 1929. Out of our total
877 business of $87,000,000, meat sales aggregated about $11,000,000. Six million dollars of this amount was sold through our 487 stores having fresh meat departments and the balance of five million dollars represents sales of hams and bacon, sausage, canned meats, etc., which
878 are handled in all stores. In 1929 we purchased about 10% of our meats from Swift & Company, that is, about $110,000, and we purchased approximately $2,000,-

000 of meats from the four large packers—most of this from Armour & Swift. The remaining $9,000,000 we purchased from other packers, including possibly
881 $1,000,000 from local non-federally inspected slaughterers, who merely kill, sell the carcasses, and do no other processing. Our margin of gross profit in meat lines ranges from 14% to 18% on gross sales throughout
888 our different territories. It is greater in the meat department, because the handling cost is greater.
879-80 The other two large packers in that territory don't amount to so much as Armour and Swift. Armour and Swift dominate the western territory.

1104 (43) WILLIAM S. CLITHERO, Assistant Comptroller and Assistant Secretary, Armour & Company, Chicago, Illinois, testified:

I am a statistician, research man, and accountant by profession. On the basis of Moody's industrial manuals for the years 1920 to 1930 I have prepared certain data as to sales and other financial information regarding chain stores and food companies. Petitioners' Exhibit 69 is a financial record so prepared of the 12 grocery chain store concerns therein specified as follows:

[fol. 963] The Great Atlantic & Pacific Tea Co.
The Kroger Grocery & Baking Co.
Safeway Stores, Inc.
The American Stores Co.
First National Stores, Inc.
The National Tea Co.
McMarr Stores, Inc.
The Grand Union Co.
Daniel Reeves, Inc.
R. C. Bohack Co., Inc.
Loblaw Groceterias Co., Ltd.
David Pender Grocery Co.

It shows for these years sales, earnings, number of stores, and whether grocery, meat, or combination stores. Blank spaces indicate that information there missing was not reported for the years in question. Symbols used are

explained by notes at the bottom. The "weighted
1106-7 averages" shown at the bottom of the second table on the first page show the percentage of total earnings for the companies reported in the respective columns above to the total sales for those companies, the number of companies so computed being shown in parenthesis in front in each case. References to volumes and pages in Moody's manual, from which the information was taken, are shown under the heading, "Index," in the lower right-hand corner.

1108 Exhibit No. 70 is a financial record of the following eight food companies, as reported in Moody's industrial manuals, similarly compiled and indexed:

National Dairy Products Corporation.
National Biscuit Company.
The Borden Company.
Standard Brands, Incorporated.
General Foods Corporation.
Gold Dust Corporation.
Beatrice Creamery Company.
United States Dairy Products Corporation.

1110 Petitioners' Exhibit 71 is a financial record of 15 non-defendant meatpacking concerns compiled in the same way and from the same source, as follows:

[fol. 964] John Morrell and Company.
Beech-Nut Packing Company.
George A. Hormel and Company.
Roberts and Oake, Incorporated.
Rath Packing Company.
John J. Felin and Company, Incorporated.
Brennan Packing Company.
Miller and Hart, Incorporated.
Jacob Dold Packing Company.
Hygrade Food Products Corporation.
E. Kahn's Sons Company.
East Side Packing Company.
Oscar Mayer and Company.
Adolf Gobel, Incorporated.
Columbus Packing Company.

1111 Petitioners' Exhibit 72 is a financial record of the four defendant meatpacking concerns for the same

years, similarly compiled from the same source and checked also from figures furnished by those concerns direct, except as to Cudahy Packing Company, figures for which are taken only from Moody's.

1112 Petitioners' Exhibit 73 is a recapitulation of financial data contained in the previous four exhibits, comparing them as to the four classes of companies.

1113 In compiling the non-defendant packers' record (Petitioners' Exhibit 71), I omitted Kingan and Company because it is not reported in Moody's.

1114 (44) FRANK WALKER WHEELER, Assistant to the President, Great Atlantic & Pacific Tea Company, New York City, testified:

1116 This Company is in the chain grocery store business and its number of stores and sales during the years (fiscal year ending March 1st) 1921 to 1930, were as follows:

1921	4,638	stores; sales,	$234,420,618
1922	5,215	stores; sales,	201,096,503
1923	7,329	stores; sales,	245,964,740
1924	9,269	stores; sales,	296,461,460
1925	11,413	stores; sales,	352,031,119
1926	13,991	stores; sales,	440,023,100
1927	14,818	stores; sales,	574,087,184
1928	15,672	stores; sales,	761,402,805
1929	15,177	stores; sales,	972,799,185
1930	15,418	stores; sales,	1,053,692,882

1117 They sold smoked and cured meats in 1920 but no fresh meats. A. & P. first put in separate meat departments late in 1924, and we called such a store a "combi-[fol. 965] nation" store, selling groceries, fresh vegetables, and meats; also fish in a good many of them. On September 1, this year, we had 3,851 such stores out of the total.

1118-22 Since October, 1920, our principal facilities have increased as follows:

1. Warehouses (to which goods are shipped in carload lots and broken down for truck distribution principally to retail stores): 10 in 1920, 53 in 1930.

2. Bakeries: 2 in 1920, 35 in 1930.

3. Produce warehouses (separate buildings specially equipped to handle fruits and vegetables): 1 in 1920, 23 in 1930.

4. Butter warehouses: 1 in 1920, 2 in 1930.

5. Cheese plants (for storage and curing, located in cheese districts): 1 in 1920, 3 in 1930.

6. Creameries: None in 1920, one today.

7. Fish warehouses: None in 1920, one today.

8. Laundries: 1 in 1920, 2 today.

9. Printing plants: One both times.

10. General food factories (not including milk and salmon): 2 in 1920, 9 today.

1119-20 The principal products of our general food factories are canned tomatoes, canned pears, canned baked beans, catsup, chili sauce, jams, jellies, canned corn, vinegar, macaroni, spaghetti, cocoa, candy, peanut butter, spices, extracts, and also tin cans which we use in our own packing.

11. Milk plants (buying milk from farmers, evaporating, canning, and shipping it to distributing warehouses): None in 1920, 9 today.

12. Salmon canneries: None in 1920, 6 today, all in Alaska.

[fol. 966] 13. Coffee roasting plants: 3 in 1920, 7 today.

1119-20 We maintain buying headquarters in Brazil and Colombia, South America, for the purchase of coffee.

1123 We do no meat processing at any of these plants.

1126 We have some of what we term meat-cutting plants that take whole carcasses and break them down into small units for distribution, more in line with the demand of each store, that is, to fit the selection of meat that we ship into each store to the demand in that neighborhood. These plants where we do that work have Federal inspection.

1123-24 Our profit for the year 1920, which is not reported in Moody's, was $5,803,333, or 2.48% on volume of sales and 22.95% on investment. For certain other years our profit percentages were as follows: In 1925, 2.72% on sales, 19.14% on investment or net worth; in 1930, 2.49% on sales, 22.08% on investment. Ac-
1136 cording to my recollection of statistical studies made by our Company, the total meat sales in the United States at retail values through all sources amounts to between three-and-a-half and four billion dollars.

1139 It is the practice in our business to offer special articles from time to time at a reduced price. This is done for advertising purposes and also in order to distribute our profits in excess of 2½% net on sales. The company endeavors to earn 2½% net on its sales and the actual return last year was 2.49%. When we find from our figures that we are running somewhat above that we distribute the additional profit by means of special sales at
1140 lower prices. The volume of these specialty sales is about equally divided between meats and non-meat lines.

1125-26 We operate over practically all of the country from the eastern seaboard and Canadian border to the Gulf, and as far west as Kansas City and Dallas, and have recently opened a few stores in Los Angeles, Califor-[fol. 967] nia, having retail stores in 36 states in all.

Out of our total sales of $1,053,000,000 in 1929,
1127 our sales through our 3,851 meat departments totalled $110,082,602. The cost of meat so sold was $87,-262,479, including the cost of the cutting we do, which is not very large. The difference represents gross profits on these meat sales of 20.75%.

1128-31 Government's Exhibit No. 4 is a letter from Mr. Connor, our national fresh meat representative in Chicago, showing approximate percentages of products handled in our meat departments purchased from Swift, Armour, Wilson and Cudahy, and the remaining independent packers. Mr. Connor is the same source we would consult for such information, and his statements are authentic. The total upon which these percentages are based is the $87,000,000 total meat business that I previously referred to. We purchase a great many other food commodities be-

sides meat, principally from manufacturers, very little from intermediate jobbers and wholesalers.

1132-5 Government's Exhibit No. 5 is a letter from our Mr. Parr, upon whom we would rely for such information, showing the approximate total amount of our purchases from leading food manufacturing companies such as are commonly known as "food integrators," handling a diversified line of food commodities.

1145 With rare exceptions, our business is done on a cash and carry basis. We do not make deliveries.

1146 The reduction in the number of our stores in 1929 as compared with 1928 was due to the enlargement of some stores that were in a neighborhood with two stores close together. We would open a larger store in between the two that served the same trading area. The reduction in stores was not due to a lesser amount of business. Our sales figures went up while our stores went down.

[fol. 968] (45) HENRY C. BOHACK, President, H. C. Bohack Company, Inc., Brooklyn, New York, testified:

1149 This concern is in the chain grocery and meat
1150 store business in which I started 42 years ago with
1151-8 a single store in Brooklyn. I now have 661 stores, of which 260 have meat departments. We have our own bakery and operate warehouses into which we ship in carload lots and from which we distribute in trucks to our stores, combining meats, groceries, etc., in the same truck. We have a sausage manufacturing plant and smoke and cure hams, but do no slaughtering. We also handle chickens, eggs, butter, and cheese, and loose milk; that is, we buy the milk from the milk men and sell it in the stores and do not handle it from the warehouses.

1150 We started alone with groceries and we have added meat and we added pork and we added bakeries and vegetables, fruit and fish, and we have a little gasoline station and rubber tires. We sell anything that we find will reduce our overhead. We are working very hard on that. You have to have a great system and work hard to keep down your overhead. You can only do that

when you get two or three departments under one roof and sell the goods reasonable so that the consumer saves money.

1151-58 Petitioners' Exhibit 74 shows the growth of the Bohack store business since 1920, with number of stores, number having meat departments, total sales, net earnings, and total meat sales, for the years 1920 to 1929. Our stores are all located in Brooklyn, Queens, and Suffolk County, Long Island.

In selling fresh meat we do the cutting in about 260 of our stores, but in 50 of our stores we have a refrigerated case in the grocery store in which we handle and sell packaged meats cut at the central plant, wrapped up, chilled, and kept at a temperature of about 30°. It is im- [fol. 969] possible to do this unless we can sell in a small radius from the cutting point. Our greatest distance on these products is 20 or 25 miles.

We buy our meats, including those that we process, from Armour or any of the standard packers that we can get it from, and find that they compete for our business. The large packers are better equipped to handle the large orders, and we buy our car lots principally from them.

The complaint that they are not getting enough to enable them to make a profit is not peculiar to the large
1161 packers. Everyone thinks he sells too cheap, and that is the general cry with everybody when he is in business. Our warehousing overhead costs us around 7% on the volume of sales. That includes getting it into the stores and getting it out and taking care of it. We have a warehouse in which we have space we could use for another twenty million dollars of business.

1162 The amount of space needed depends on how good your buyers are and whether you get stuff in there that does not go out very quickly.

1163 There is a more or less constant volume of food products from year to year moving through the various distributing channels, including chain stores, independent groceries, and meat dealers, part of which of course flows through our warehouses just as part of it flows through the packer warehouses. If the packers should take up retailing their own meats and handling grocery lines on a large scale, it would increase the quantities of these products handled through their warehouses, but would cut down proportionately the amount left to

handle through other distributing warehouses. The quick-freezing process would not help this, because it would cut down the necessary warehouse space required in proportion to value of the product, and would increase the surplus available in all lines, including ours.

Unless something happens to increase the total need for [fol. 970] warehouse space, any increase in the use of space by one line of distributors will be only at the expense of another line of distributors.

1165-6 We use "leaders" in our business every week, and for this purpose sometimes select goods that do not move fast enough and we wish to get off our hands, whether we make money or not. Another purpose is for advertising, that is, to get customers into the store and give them a bargain on something. Each department has its own choice in selecting them, both in groceries and meats, but there is no tendency to select the popular brands of meat of the large packers and use them as leaders.

1170 We do not put meat markets in many of our stores because we haven't the space for them or room for refrigeration. You need spaces at least 20 by 80 or 25 by 80, and they are hard to get.

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(46) HERBERT PEARCE BROWN, Comptroller, National Dairy Products Corporation, New York, testified:

1174 This concern is in the dairy products business, handling milk, ice cream, butter, eggs, buttermilk, dried milk, and semi-solid milk, in the dairy line, and also sausage which we make in the Deerfoot Farms plant at Southboro, Massachusetts.

1175 We manufacture ice cream and I think we are rated the largest manufacturers of ice cream in the United States.

1175 We have from time to time acquired existing corporations and National Dairy is a combination of them. One of our subsidiaries, Sheffield Farms Company, has around 300 retail stores in New York City. I do not know how the Deerfoot Farms sausages are distributed. Kraft-Phenix Cheese Corporation is one of our subsidiaries acquired this year, and manufactures principally [fol. 971] cheese. National Dairy Products was not or-

ganized until December, 1923, and our sales have been reported publicly only since 1924. Figures in Moody's
1181 manual for years prior to 1924 are the consolidated figures for the constitutent companies which later came into National Dairy Products. For the year 1929 our consolidated net sales were $300,000,000; our net profit $21,576,176, or 7% on net sales; and our net worth, capital and surplus, was $110,603,065, on which our earnings were 20%. In addition to National Dairy sales, Kraft-Phenix sales for 1929 were around $80,000,000.

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(47) FRANK P. ZIMMERMAN, Secretary, Gold Dust Corporation, New York City, testified:

1185 This concern manufacturers and distributes a varied line of products, including soaps and shoe polishes, and a food line consisting of nut margarine, salad dressings, pickles, preserves, honey, flour, and cereals.

1186 We manufacture every one of our products. Our manufacturing plants are located at Bayonne, Balti-
1190 more, St. Louis, Minneapolis, Duluth, Kansas City, Buffalo, and Indianapolis in the United States and in Montreal and Hamilton in Canada.

1186 It represents a merger of constituent companies manufacturing all of the products we distribute.

1187 We do not include our sales volume in our published financial statements, such as those reported in Moody's manuals.

We sell to chain stores, wholesale grocers and distributors, but do no business direct with retailers except in the case of chain stores.

1188-9 The present concern was organized in 1923. Petitioners' Exhibit 75 includes six annual reports of the Gold Dust Corporation for its fiscal years ending August 31, 1924, 1925, 1926, 1927 and 1928, and the calendar year ending December 31, 1929.

1190 We do business throughout the United States and in Canada, with some export business with foreign countries.

[fol. 972] The largest part of our business in food lines is handled through about 325 entirely independent
1191-4 distributors scattered throughout the country, and not direct to chain stores or other retail purchasers. The chain stores buy directly from these distributors, and we come in selling contact with the former only as to a small part of our food business. This does not include milling products, however. They are sold direct to the chains. Our milling products represent around 40% of our total sales. Soap and shoe polish are also sold direct to chains.

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(48) ELMER F. PANOR, Accountant, Kroger Grocer & Baking Company, Cincinnati, Ohio, testified:

1195-7 This concern does a chain store grocery and meat business and operates two slaughtering and meat-packing houses at Columbus and Cincinnati, Ohio, the products of which we sell through our retail stores.
1203 The Cincinnati plant we have had over 20 years; the Columbus plant has been acquired in the last eight years. We do no other slaughtering, but have one processing plant for sausage in Detroit.
1198 We also have 12 bread and some cake bakeries scattered over the country, 5 dairies, our own candy and beverage factories, and plants for the packing of teas, spices, olives, and other bottled goods, and the roasting of coffee, the products of all of which we retail in our own stores.
1199 The lines we handle include staple groceries, dairy products, meats, fish, poultry, bakery items, and a general food line.
1199-1201 The following table shows the number of stores operated by the Kroger Co. by years from 1920 to 1929, and the number of general food stores handling groceries, meats, fruits and vegetables, that are included in the total stores:

[fol. 973]

Year	Total number of stores	Combination food stores
1920	903	276
1921	992	455
1922	1,413	611
1923	1,800	806
1924	2,127	985
1925	2,856	1,279
1926	3,369	1,417
1927	3,749	1,565
1928	5,260	2,711
1929	5,575	3,191

1205 At the present time, October, 1930, we have approximately 300 less stores than we had on December 31, 1929.

1202 Our percentage of profit on sales since 1920 has ranged from 1.37% in that year to 3.03% in 1925. Our gross sales have grown from about $50,000,000 in 1920 to $286,000,000 in 1929.

1203 We operate generally in the middle west, bounded by Michigan, Pennsylvania, Mississippi, and Missouri.

1209 (49) EDWARD W. SHINEMAN, Secretary and Assistant Treasurer, Beech-Nut Packing Company, Canajoharie, New York, testified:

This concern handles food specialties such as bulk and sliced bacon, hams and beefs packed in glass jars and cartons, peanut butter, conserves, jams, jellies, preserves, marmalades, pork and beans, prepared spaghetti and macaroni products, and condiments; also chewing gum, mints, fruit drops, candy drops, tea biscuit dainties, and coffees.

1210 We have plants at Canajoharie; Brooklyn, New York; San Jose, California; Hamilton, Ontario; Fairmont, West Virginia; and Utica, New York.

1211 We do no slaughtering and handle meats only at our main plant at Canajoharie, where we cure and smoke pork bellies and hams and dry beef. We have an arrangement whereby our products are sold through

1213 about 3,400 retail outlets of the United Cigar Stores throughout the country, but there is no ownership

[fol. 974] relation between us. United Cigar Stores acquired at the time 50,000 shares in Beech-Nut which they have since transferred to Gold Dust Corporation
1219 with whom, as a matter of trade knowledge, they
1211 are now affiliated. We also sell to wholesalers.
1212 In 1929 our sales were $25,000,000; net earnings before tax was deducted were $2,700,000 or 11.9% on sales.

We buy our meat products principally from Kingan and Company, Parker and Webb of Detroit, and Libby, McNeill & Libby—occasionally elsewhere.

1219 (50) HARDEN F. TAYLOR, President, Atlantic Coast Fisheries Company, New York, testified:

1220-1 This concern is in practically all branches of the fish business. I have been with it since December, 1923, and before that was with the United States Bureau of Fisheries since 1905, in which I was Chief Technologist for the last five years and, for the last year, Chief of the Division of Fish Industries. In my researches for the
1222 Bureau I had to deal with the key problem of the fish industry, the problem of perishability. Seafoods are the most perishable of all foods in this country.
1223 Fish are caught most abundantly in the warm seasons when, due to the popular belief that they are not good, the demand is not very heavy. In the winter, when the demand is heavy, the catch is small. Consequently we have a huge over production in the summer, with great losses of perishable fish, and huge deficiencies in the winter. It is, therefore, important to be able to hold these fish for a protracted period.
1224 We finally developed the quick-freezing process and began its commercial use in 1924, and developed the essentials of our present process by 1926. Since then our annual gross sales in fish have increased about four times; and for the 16 months ending April 31, 1930, were over 16,000,000, of which $1,500,000 to $2,000,000 repre-
[fol. 975] sented the quick-frozen product—the balance all kinds of fish products put out by our 13 subsidiary companies. Last year we handled between 175,000,000 and 200,000,000 pounds of fish, of which about 35,000,000 pounds

were quick-frozen. The latter are shipped in car-
1225 load lots, principally in mechanically refrigerated
car, 50 of which we lease. This product represents
1226 the edible portion of the whole fish, skinned, pre-
pared, frozen, packed by automatic machinery and enclosed in wrapping cases in separate packages wrapped with parchment or celophane, and is sold in the same packages at the retail outlets.

This has had a very profound effect on marketing.
1226 Under the old method the inedible portion, amount-
ing to 60% to 65% in the case of haddock, for instance, was shipped along with the edible portion, and due to its perishability had to go by express at high rates.
1227 Due to its disagreeable nature and odor, it could
not be distributed through grocery stores, but had to be handled in separate stores, and as it was sold mainly on but one day of the week, and not in much demand in the summer, all of this store overhead had to be borne by the fish alone. This, combined with the high express, heavy shipping weight, and the perishable loss in the stores themselves, placed a heavy burden on the fish industry. The new process enables the elimination of the 35% to 40% inedible part, reduction of shipping weight, the use of carlot refrigerator freight shipments, instead of express, at correspondingly lower costs, and its more even distribution throughout the year through cold storage warehouses and
regular grocery and general food stores in original
1228 packages throughout the country, with practically no
loss. The product can be kept up to a year after freezing, but it is desirable to liquidate on inventory within six months, if possible. The product when sold is, for all [fol. 976] practical purposes, as fresh as the day it was caught, and the flavor is retained.

Most of our competitors are engaged in this quick-freezing in some degree, but we are perhaps the largest concern doing it.

1229 There are 8 or 10 concerns engaged in the inter-
state fish business that are comparable in size with ours. It has been applied heretofore principally to haddock, but we are beginning its use in other varieties, including cod, salmon, halibut, and sole; to some extent on scallops, but not for other shell fish.

We distribute over the entire continent north of the Mexican border, as far as California, and all through the Middle West, using as distributing agents fish wholesalers who have been in the business for years, and other provision distributors—in some instances, meat packers, such as Kingan & Company; where we make our arrangements not with the headquarters houses, but with each local distributor. Prior to 1922 this country-wide distribution
1231 of fresh fish, now possible with the quick-frozen process, was not in commercial use, that we know of.
1232 In my opinion, it seems very unlikely that monopolization of the food industry is either practicable or possible.
1233 While we do not disclose the details of our quick-freezing process, it includes the use of flat aluminum tables carried on a chain conveyor with ribbed bottoms, which dip into a calcium chloride brine as they travel along, refrigerated to about 25 degrees below zero. The goods lie on these tables, and are frozen in 28 to 40 minutes to a temperature of zero to 10 degrees below zero.
1236 We freeze from one side only, and do not use the double-plate system, and our process is not embraced in the Birdseye patent.

In the retailing store our products are kept sometimes in electrical refrigerators, which are not widely used as yet; more generally in ordinary refrigerators, where they slowly defrost. The refrigerator display case we have not gone [fol. 977] into, except experimentally. The products should be kept at 18 degrees to 20 degrees in a retail store, whereas the ordinary ice-box runs from 45 degrees to 55 degrees. This could be reduced with the use of salt, but it is
1235 hardly practical. In refrigerator cars we aim to maintain 15 degrees or lower, which is much colder than ordinary refrigerator car temperatures. The latter with ice and salt can be kept at 25 degrees, but it is very uncertain and may rise to 35 or 40 degrees on the trip. A mechanical refrigerated car is much better. The technique of quick-freezing of fish has progresed farther than it has as to meats, because of the red blood pigments in the latter, and the difficulty of maintaining the color. This is a chemical question, and does not, in my opinion, affect the
1236 speed or temperature required for freezing.

1237 Our distribution by motor truck is not extensive, and is done principally from distributing centers to suburban stores, purely an urban affair.

1238 Up until our use of this quick-freezing process, the great bulk of our fish was sold at New York City and along the eastern seacoast, the Great Lakes, and the Pacific coast—not to any great extent through the expanse of the continent. Even the old sharp freezing process, while it keeps the fish reasonably good for several months, never leaves it in quality approaching the quick-frozen and 1239 packaged goods. The greater part of our distribu- 1240 tion of quick-frozen and packated products is now in the Middle West, beyond the range of fresh fish, and the process has enabled us to compete in those territories where formerly we did not attempt to compete at all. In St. Louis and Kansas City, for instance, the principal demand was for catfish, taken from the Mississippi and its 1241 tributaries. Since we entered the field, the frozen packaged fillet of haddock has to a large extent displaced the catfish and halibut, though not entirely. Except for territories say within 48 hours of our sources of supply, it is superior to the fresh product available in the com- [fol. 978] munities we serve. As a matter of fact, we are distributing in territories in direct competition with fresh fish, as in Syracuse, New York, to which it is only 1242 an overnight trip from New York to Boston; also at Rochester, which is contiguous to the lake, and at Chicago, Cleveland, Detroit, and Buffalo. In all of these, we successfully compete on an equality with the product caught locally; also in Seattle, with the Pacific coast fish.

We ship entirely in through car shipments, except for a single break sometimes, as at Columbia, South Carolina, en- route to Atlanta. Points that we cannot serve in this 1243 way we take care of through territorial distributors who handle it either by overnight express or by truck.

The company tried a chain of retail fish stores in New York about 10 years ago, prior to my connection with it; but they were not successful. We are working toward electrical refrigeration in the stores, through distributors with cold-storage warehouses specializing in frozen merchandise, which includes fish, berries, meats, or whatever else can be so handled; using refrigerator trucks for distribution,

and retail stores with electric refrigerators, so that the overhead can be spread through all of these various
1245 products handled. This is not practicable, so long as there is only fish or a few other products that can be so distributed. It does not afford enough volume. A general line of quick-frozen products could obviously be handled more cheaply in a combination store than in separately specialized meat, fish, and grocery stores, and the equivalent cost of the former must be substantially lower per pound handled.

1246 It would thus become difficult for the specialized store to compete with the combination store. Even today the retail fish store is suffering from competition of grocery stores selling fish. The ideal distribution system [fol. 979] would embrace proper apparatus for freezing at the point of production, proper refrigerator cars for railroad transportation, proper trucking apparatus for transportation from the railroad to local distribution points, and proper refrigerator apparatus for preserving and handling in the stores, until sold to the consumer.

1247 We find quite satisfactory the service given the refrigerator cars that we use by the car owners—also the local trucking and cold storage warehousing
1248 at points of distribution. It requires both proper equipment and proper attention, but we do not have to bother about that, as there are public cold storage warehouses in every important city, catering to the general food trade, absolutely independent of us. In most cases, they are satisfactory; if not, we give our business to someone else.

Retail refrigerator equipment is still in an experimental stage. We put it in 80 stores in one mid-western city. Its manufacturers did the servicing; we supplied the product, and the local distributor managed the sales campaign. Technically it was a success, though a failure commercially, because of lack of volume. We do not consider it in any way necessary, in order to get satisfactory results in the distribution of our quick-frozen products, to be able to own and control each one of these distribution units.

1252 On the other hand, I think it would be very foolish, commercially. Of course, the question of having a widely distributed line that could use economically all the facilities of a cold storage warehouse, would have to be

considered. With our present volume, we would not consider it.

A general line of quick-frozen foods could all be
1251 shipped in common refrigerator cars or other containers, without one injuring the other. Whether this will be cheaper is a question that will probably
1253 never arise in an important way, because of the different points of origin—for example, frozen fish alone could be shipped from Groton, Connecticut, and not [fol. 980] meats or fruits; although it might be possible to work out a scheme for concentration of these various products in large distributing centers, and their shipment from there in mixed cars.

1254-5 With reference to Petitioners' Exhibits 76 and
2428 77, relating to refrigerator car equipment, it was stipulated that the supply of refrigerator cars in the United States, whether owned by the defendants or other meat packers, private car companies, or common carriers, is adequate to afford an ample supply of refrigerator cars at any time to any who need them and are in a position to use them.

[fol. 981] (51) VICTOR H. PELZ, Director of Editorial and Research Staff, American Institute of Food Distribution, New York, testified:

1257-8 I graduated from Northwestern University in 1916, with a master's degree in 1917; instructed in the School of Business, University of Nebraska, 1919 to 1921; then with the University of Wisconsin one year; then three years as professor of marketing, Tulane University, New Orleans; then, 1925 to 1927, on the graduate faculty at Stanford University, then six months as Assistant to the President, H. O. Wilbur & Sons, a chocolate manufacturing concern in Philadelphia.

The Food Institute is a non-profit organization to furnish information and research in problems of food distribution for its membership, which includes between
1277 800 and 900 business firms in all branches of the

1258 food industry, such as wholesale grocers, chain stores, manufacturers, meat packers, brokers, fruit and vegetable canners, etc.

Since 1928 we have conducted studies of the volun-
1259 tary chain system of merchandising. A voluntary chain is a group of independently owned retailers who cooperate in joint buying, joint advertising, or in joint or group control of their retail stores in retail store management. There are three general classes:

The most important group is that which is sponsored by wholesale grocers. A wholesale grocer will gather together a group of retailers with whom he has an understanding to the effect that the retailer will concentrate their purchases to a large degree from the former and it in return will furnish them with certain assistance in merchandising and managing to enable them to run their stores more effectively.

[fol. 982] The second group, known as the "retailer-owned wholesaler," involves generally a regular wholesale grocery business, the stock of which is owned entirely or largely among a group of retail grocers.

The third type is a more informal association of independent retailers for the purpose of group buying or advertising, but without ownership or wholesale grocery facilities. The latter is very informal; is likely to spring up and go out of existence quickly, or be absorbed into one of the other types. It has developed in recent times, but not as rapidly as the wholesaler-sponsored type.

So far as the members of these groups tend to pool their purchases, it gives them the advantages of quantity buying, and enables the wholesaler to reduce his costs accordingly, both overhead, operating, and selling.

1263-4 It gives the members an advertising service that they cannot afford to provide themselves with individually, and tends to eliminate the jobbers' profit, either through their distribution to the stock-holding retailer or through enabling lower wholesaler costs and prices; and, through the reduction of retail inventories, enables the saving of interest on investment to the retailer. The purpose of the voluntary chain is to enable the independent retailer to give the consumer the same merchandising service and prices comparable to those of the corporate chains.

The wholesaler-sponsored type is adopting the
1266-7 use of private brands in their merchandising.

Excerpts from Petitioners' Exhibit 78

Petitioners' Exhibit 78 incorporates in part the results of the Institute's studies on chain stores. The table on page 16 shows the number of voluntary chain organizations in each of the three groups, with the number of member [fol. 983] stores included, as follows:

	Organizations		Retail members	
	Number	Per cent	Number	Per cent
Cooperative groups	175	31.7	7,253	12.2
Retailer-owned wholesalers	103	18.7	18,076	30.3
Wholesaler-sponsored groups	273	49.6	34,311	57.5
Totals	551	100.0	59,640	100.0

Table 2 on page 11 shows the growth since 1920, both in memberships and number of groups, of the 201 groups there reported, and shows that out of that many groups, with 29,756 member stores, only 14, with 6,597 member stores, were started before 1920. The table, with explanatory notes, is as follows:

Year of Organization and Present Retail Membership of 201 Voluntary Chains

Year	Organizations started				Now have present retail membership			
	Total	Cooperative groups	Retailer-owned wholesalers	Wholesaler-sponsored groups	Total	Cooperative groups	Retailer-owned wholesalers	Wholesaler-sponsored groups
Before 1920	14	..	14	..	6,597	..	6,597	.....
In 1920	4	3	1	..	480	105	375	.....
In 1921	2	..	2	..	107	..	107	.....
In 1922	5	..	4	1	407	..	315	92
In 1923	3	1	1	1	571	23	98	450
In 1924	4	1	2	1	667	68	509	90
In 1925	15	3	5	7	2,244	35	339	1,860
In 1926	17	7	6	4	2,745	844	982	919
In 1927	29	6	8	15	2,296	160	425	1,711
In 1928	44	12	5	27	6,281	467	214	5,600
In 1929	52	9	2	41	6,562	382	114	6,066
In 1930	12	4	1	7	799	234	100	465
Totals	201	46	51	104	29,756	2,318	10,175	17,253

Notes Regarding Tables 2, 3, 4, 5 and 6

1. Each voluntary chain was asked to state its present retail membership, the date it was organized, and the number of members it had at the close of each year since organization.

Table 2 summarizes the replies of 201 organizations which gave the present retail membership and the date of organization. These 201 organizations have a total retail membership of 29,756. This Table, therefore, covers 36.5 per cent of the total number of voluntary chain organizations and 49.6 per cent of the total retail members of all voluntary chains now operating in the United States.

[fol. 984] Table 16, on page 43, shows the extent to which retailers in these voluntary chain organizations are handling food lines other than groceries, and shows that out of 28,621 stores, embraced in 203 chains, 13,377 stores, or 46.7% of the total, were handling fresh meats. This table, with explanatory notes, is as follows:

Extent to Which Retailers in Voluntary Chains are Handling Food Lines Other Than Groceries
(Based only on reports from those organizations which answered this question)

	Organizations	Total retail members	Number and per cent of total, handling					
			Fresh meats		Fresh fruits and vegetables		Bakery goods	
	Number	Number	Number	Per cent	Number	Per cent	Number	Per cent
Wholesaler-sponsored Groups	105	17,333	8,792	50.7	15,594	90.0	11,172	64.5
Retailer-owned Wholesalers	51	8,950	3,067	34.2	6,304	70.4	4,171	46.6
Cooperative Groups	47	2,338	1,518	64.9	2,290	97.9	1,498	64.1
Totals	203	28,621	13,377	46.7	24,188	84.5	16,841	58.8

Notes Regarding Table 16

1. This Table summarizes the replies to the question: "How many, or what proportion of, member stores now handle: Fresh meat? Fresh fruits and vegetables? Bakery goods (other than bread and cookies)?"

2. Replies to this question were received from 203 organizations with a total retail membership of 28,621, representing 37% of organizations and 48% of total members of all voluntary chains in the United States.

3. The figures concerning the number of stores handling bakery goods other than bread, crackers, and cookies are subject to some doubt as to accuracy. The question asked specifically concerning bakery goods other than bread and cookies but other information given in some questionnaires indicates that in many cases the answer referred to stores which handle bread and cookies only.

[fol. 985] Table 13, page 37, summarizes replies to our inquiries as to the extent to which voluntary chain organizations have enabled retailers to make savings in operations or secure concessions from manufacturers. This table with explanatory notes, is as follows:

Financial Gains by Voluntary Chains Through Decreased Operating Costs and Concessions Secured from Manufacturers

Form of gain specified:	Number of times mentioned by (95) Wholesaler-sponsored groups	(44) Retailer-owned wholesalers	(42) Cooperative groups
Lower Expenses (without detail)	11	..	..
Specific savings mentioned:			
2% on operation	5	1	..
2-5% on operation	3	..	..
8% saving	1	..	1
10-12% saving	..	5	1
Average net saving of 14%	..	1	..
Expenses reduced one-third	1	..	..
Elimination of salesmen	4	..	..
Regular deliveries	2	..	..
Faster turnover	1	..	..
Smaller receivables	2	..	..
Gross margin specified:			
2%	1	..	..
3%	..	5	..
5%	..	1	..
5-10%	2	..	..
Increased volume:	7	..	..
Specific forms mentioned:			
Through concentration	4	..	..
Better than 20%	1	..	..
Advertising allowances	19	14	4
Price concessions	19	5	11
Concessions equal 5-10%	1	2	..
Quantity purchases	7	2	3
Manufacturers' willingness to cooperate	5	..	3
Saving jobbers' profit	..	4	..
Same as chains	2	..	1
Increase in net profit	3	..	..
General answers:			
No gains	1	3	..
Becoming difficult to get concessions	1	..	1
Not much	6	1	2
Some	2	2	2
Considerable	20	2	6
No savings in operation cost	3	..	..

Notes Regarding Table 13

1. Table 13 summarizes replies made to the question: "To what extent has your voluntary chain organization and the concentration of purchases by retailers enabled you to make savings in operation, or to secure concessions from manufacturers?"

2. Systematic tabulation of the replies to this question was difficult because of the extreme range of answers given. So far as possible the savings specified in the Table are in the exact words used, and wherever any doubt existed as to the precise meaning, the answer has either been set up in a separate classification or included in the general answers.

[fol. 986] Table 15, page 39, summarizes the information received as to the extent to which stores in the three types of voluntary chains are using private brands or labels in their merchandising, which table, with explanatory note, is as follows:

Extent of Private Label Business by Voluntary Chains

	Wholesaler-sponsored groups	Retailer-owned wholesalers	Cooperative groups
Feature them	13	1	..
Quite materially	22	3	..
Using more all the time	3	1	..
Some	4	1	..
75%	3	..	..
50%	2	..	..
30-35%	2	2	..
20-25%	7	..	..
1/6 of items or sales	3	..	..
Under 5%	..	4	..
Canned and bottled goods largely	2	6	..
Only for non-member stores	4	..	..
Dealers like their brand	6	..	..
Feature non-conflicting	1	..	..
Feature Richelieu	..	..	1
Very few items only	2	5	9
Very little	13	7	2
Indefinite	3	..	..
Miscellaneous answers	2	..	..
None	8	17	29
No answer	5	6	6
Total replies	105	53	47

Note Regarding Table 15

This table summarizes replies to the question: To what extent do your own labels enter into your merchandising plans?

The Independent Grocers' Alliance is the largest of the voluntary chains and is of the wholesaler-sponsored type, with, roughly, 5,000 or more retail members.

Tables 18, page 47, summarizes the information we received as to the extent to which stores in these three voluntary groups tend to cooperate in purchases in the three general food classifications, "fresh meats," "fresh fruits and vegetables," and "bakery goods."

[fol. 987] This table, with explanatory notes, is as follows:

Arrangements Made by Voluntary Chains for Concentrating Purchases of Food Lines Other Than Groceries

Type of arrangement made	Wholesaler-sponsored groups			Retailer-owned wholesalers			Cooperative groups			
	Fresh meats	Fresh F's & V's	Bak'y gds.	Fresh meats	Fresh F's & V's	Bak'y gds.	Groceries	Fresh meats	Fresh F's & V's	Bak'y gds.
None (or no answer)	82	38	43	46	32	42	13	37	30	32
Tie-up now being planned	3	6	3	1	1	1	1	1	..	..
Occasional	1	2	1	..	1	..	..	..	2	..
Tied up largely with one source	7	30	12	1	4	1	7	1	1	1
Purchases made largely from 2 or 3 sources	..	1	4	1	1	1	4	..	1	1
Have cooperative arrangements of some character, often on specials only	11	17	34	3	7	7	16	7	12	13
Purchases handled by bids	1	2	..	1	1	..	1	1	1	..
Have our own department, plant or buyer	..	7	2	..	5	..	..	..	..	..
Will have to open our own department	..	2	..	..	1	..	..	..	..	..
Tie-up on bread only	..	..	5	..	..	..	..	..	..	..
Tie-up on crackers only	..	..	1	..	..	1	..	..	..	..
Total number replying	105	105	105	53	53	53	47	47	47	47

Notes Regarding Table 18

1. This Table summarizes the replies made to the question: "What arrangements has your group made to concentrate purchases in consideration of special merchandise concessions with regard to fresh meats, fresh fruits and vegetables and bakery goods?" In the case of cooperative groups this question also included groceries.

2. In the case of bakery goods the question as stated did not distinguish between the staple bakery items, such as bread, crackers and cookies, and the specialty lines like pies, cakes, rolls, Danish pastry, etc. The majority of the replies, therefore, refer primarily to arrangements made with bakers of bread, crackers and cookies, and in some cases the answers indicated specifically that this was the case.

3. The questions asked concerning meats were intentionally worded so as to elicit information regarding fresh meats only. Little specific information was supplied regarding arrangements for procuring cured and smoked meats. What date is available, however, indicates that special arrangements with packing houses are more common with respect to cured than fresh meats, for nearly every grocery store carries some cured meat items.

This table shows, for instance, that out of 105 reporting in the wholesaler-sponsored group, 82 show no concentrated meat buying, and seven indicate that in the purchase of this commodity, they are "tied up largely with one source." This latter description indicates the highest degree of concentrated buying of any of the categories there listed. That arrangement means that the voluntary chain headquarters tries to persuade or compel its retail members to live up to the agreement. The extent to which they do so is shown indirectly by the table on page 49, which with explanatory notes, is as follows:—

[fol. 988] Extent to Which Retailers Concentrate Purchases of Allied Food Lines from Cooperating Supply Houses

Degree of concentration	Number of organizations reporting specified degree of concentration	
	Wholesaler-sponsored groups	Retailer-owned wholesalers
Less than 25%	..	..
25-49%	1	..
50-74%	13	1
75% or over	20	14
Not very well	2	1
Quite well	15	..
Very well	12	..
Answers indefinite	7	3
No tie-ups reported	35	34
Total replies	105	53

Notes Regarding Table 19

1. This Table summarizes replies to the question: "To what extent do your members really cooperate by making purchases of allied food lines through supply houses with which you have made special arrangements?"

2. In the case of cooperative retail groups, one question was asked to cover both grocery and other food lines, the replies being summarized in Table 12.

This table shows, for instance, that out of 105 groups reporting, 20 reported that out of total goods handled by their member retailers, 75% or more were purchased from supply sources with which the retailer had some kind of an exclusive purchasing arrangement. This table deals only with the first two groups of voluntary chains; the third, or strictly cooperative group is dealt with in the same way in table 12, page 35, which table, with explanatory notes, is as follows:—

Extent to Which Retailers in Cooperative Groups Concentrate Purchases from Affiliated Supply Houses

Degree of concentration	Number of cooperative groups reporting specified degree of concentration
Less than 25%	..
25-49%	..
50-74%	4
75% or over	8
Not very well	1
Quite well	10
Very well	6
Answers indefinite	3
No tie-ups reported	15
Total replies	47

Notes Regarding Table 12

1. The report form sent to cooperative retail groups asked the question: To what extent do your members really cooperate by making purchases through supply houses with which the group has made special arrangements?

2. Replies cover groceries only unless a group has made tie-ups on allied lines, in which case answer supposedly applies to all. Majority of replies were expressed in percentages; all others were classified according to degree of concentration indicated.

[fol. 989] In these last two tables, it is probable that those who replied "very well" intended to indicate a concentration of over 50%; and in that case the total number cooperating to the extent of 50% or more can be obtained by adding the number listed in the categories, "50% to 74%," 75% or over," and "very well."

1279 These tables are based on the replies to questionnaires sent to all voluntary chains of which we had record, total of 551, and these various tables that I have referred to, summarize the replies of those who did reply to the specific questions on the questionnaire; for instance, out of the total replies received, only 105 out of the wholesaler-sponsored group, and 53 out of the retailer-owned group replied to the particular question dealt with in Table 18.

1280-89 The replies are fairly typical, both as to size of chains, type of organization, methods of operations, and geographical distribution.

[fol. 990] In some cases the quantities bought collectively by a given voluntary chain are so large as to consti-

1290 tute a considerable part of the seller's total output. It may range from 5 to 75%. For instance, there are many small canners with relatively small output who may sell the bulk of it to one, two, or three distributing organizations, chains, or regular chains.

Voluntary chain advertising includes both educational and competitive arvertising. In the latter case the
1291 chain usually represents members not territorially in competition with each other, though they may be
1262 in competition with other stores enjoying similar service from another chain, such as the District Grocery Stores and the United Food Stores in Washington, D. C. This may result in increasing the intensity of competition, with a consequent decrease in the number of marginal retailers, crowded out by the greater efficiency of the remaining organizations.

There are about 900 regular chain grocery store organizations having in the neighborhood of 60,000 to
1300 65,000 stores in the United States. That is an
1300-01 approximation. The 551 voluntary chain organizations are in competition with each other and likewise with the 900 integral chains who are also in competition with each other in the same way.

The various voluntary chains operate independently of each other, except in the case of federated groups
1318-9 such as Independent Grocers' Alliance, Red & White, Clover Farm, Nationwide, etc. Each of these groups operates independently of each other just as much as A. & P. and Kroger, and independently of trade associations in the grocery field. Indeed, many of the retailer-owned wholesalers have grown out of or been a by-product of a trade association community of interest. In some cases the retailer members are members of local retail grocers' associations.

There has been a marked change in marketing practices in the past ten years. There has been a very de-
1293 cided decline in the practice of future buying by re-
[fol. 991] tailers, with the resulting tendency to buy from week to week on short orders for immediate use, cutting down the stocks carried by the stores and compelling the wholesaler to carry the inventory cost. This is commonly known as "hand to mouth" buying, and has increased the importance of quick delivery and good transportation facilities, and has naturally given a greater competitive advantage to the seller in a position to furnish quick and prompt deliveries.

1302 My observations have enabled me to observe the outstanding trends in the changes being made in

merchandising methods during the past ten years. First, there has come the remarkable change in concentration of control of retail outlets as typified by the regular chain during the last 10 years and as typified by the voluntary chain during the past 3 or 4 or 5 years. There are generally assumed to be about 300,000 independent retail grocers in the country today. I do not know how many there were in 1920. Presumably, the number was approximately the same aside from the increase brought by decentralization of population in smaller communities and by growth in population. But among the 300,000 retail outlets today, we have this present phenomenon of about 60,000 tied up in voluntary chains. No accurate figures are avail-
1303 able whatsoever of which we have any knowledge as to the volume of business which is controlled by the voluntary chains. Our estimate is, and it is purely an estimate, that about 25% of the retail grocery business of the country is now in the hands of the constituent members of the voluntary chains. This cannot be stated in dollars because there is no agreement to the best of my knowledge at all, as to what the total retail volume of business of the country amounts to. Of course that puts a shaky foundation on any 25% estimate. I realize that. But it is a figure arrived at deductively figuring from the top down instead of from the bottom up. Students in the grocery field seem to agree that there is about 35 per cent of the retail grocery business in the hands of the 800 or 900 centrally owned chains. So that today we have approxi-[fol.992] mately 60 per cent of the total grocery business concentrated in the hands of 1500 or less organizations.

1304 Concentration of control of the retail outlets in this limited number of organizations is one change. The merger, consolidation movement among food manufacturers is a matter of fairly common knowledge, although no completely significant statistics concerning that
1305 consolidation movement to my knowledge are available. In some respects that movement has been going on underneath the surface in a manner that so far has not come out to public knowledge. For example, there is the definite movement on foot among the corn canners of the United States to bring about a central selling organization split up by districts. The business depression

put a quietus on that movement probably for some time to come. But last year it was prominently discussed among corn canners. That tendency toward consolidation among food organizations has been greatly accentuated by the activities of the Federal Farm Board and probably we have only seen the beginning of that movement in the sale of products which are of direct interest to consumers. After all, we do not eat wheat, and we do not eat cotton and we do not eat live stock. Those have been the chief fields of activity of the Farm Board so far, but recent activities of the Farm Board, if a lay opinion can be asserted here, indicate that there may be the continuation of that growth of consolidated selling organizations fostered by the Farm Board in connection with products that are directly consumed in the form in which they leave the producing centers.

1306 The grape control plan in California, is one definite illustration of the effect of the Farm Board in trying to centralize the marketing of a product which is eaten the way it is grown with some modifications.

A further significant development is the growth of this all around combination food store, because it has from a business standpoint the advantage of giving a larger volume to bear the given overhead necessary to carry on efficient retailing operations. It is convenient for the consumer. What little we know about the buying habits of the American housewife indicates that they want to do [fol. 993] their buyng with as little inconvenience as possinble. They would rather shop under one roof than five if they can, which is the consumer's reason for the increasing patronage of these all-round combination general food stores.

If and when the technical problems of quick-freezing are solved, there will then be five major developments, because as Mr. Taylor indicated this morning, the development of departments in retail stores or separate stores which specialize in the distribution of the frozen products is a development which, if one may prophesy, is about to come. This, in turn, will bring about an acceleration of this movement for general food stores.

1307 Those five features (1) the consolidation of retail outlets; (2) the concentration of control of selling of manufactured food products; (3) the concentrated con-

trol of the selling of agricultural food stuffs that enter into consumption in their original form; (4) the development of the modern food store handling a complete food line; and (5) the possibility of the extensive growth of the quick-freezing of foods, are, in my opinion, the things that have come about in the last ten years which are of significance in food distribution.

1312 There is little doubt but that the competition for the patronage of the consumer in Washington is keener now with practically all of the retail business in the hands of half a dozen chain groups than it was ten or fifteen years ago when each local corner grocer was competing only with the limited resources or the equally limited resources of other corner grocers across the street and each local market area was a distinctly separate
1313 trading area. If this trend continues in the lines which I have described it will involve the substitution of competition between integrated groups rather than a competition between disjointed legally independent business units each in a given level.

1323 The best data made public on total food expenditure in the United States ranges from $16,000,000,000 to $27,000,000,000. Ditman's estimate is $24,000,000,000, including $3,000,000,000 for food produced and con-
[fol. 994] sumed at home, such as what the farmer raises for his own family use. Ditman is editor of the Progressive Grocer, and his estimate agrees with that of Professor Nystrom, of Columbia, although the two arrived at it in totally different ways.

1327 (52) BRUCE MCCULLOCH, of Omaha, Nebraska, Editor of the Daily Journal Stockman, testified:

The Daily Journal Stockman is a farmer paper interested particularly in the live stock market and has a daily circulation of from 125,000 to 150,000.

1328 We have a corps of men who obtain market news on the general trend of the market and another corps of men who get the actual transactions from the
1329 market as they occur. I am out on the market every day part of the time and very frequently do the market reporting myself.

1330 I have always thought there was plenty of competition on the Omaha market. There are the large packers and a dozen small packers located at Omaha, and a number of order buyers buying for packers all over the country. There are a great many traders and a still greater number of country buyers who are there buying stockers and feeders every day in the year. There is plenty of
1331 competition, I would say and it is keen and active.

A few years ago all the stock, or the great majority of it, was brought to market by train but at the present time probably half of the hogs and one quarter of the cattle sold on the Omaha market come in by auto trucks. This method of delivery enables the farmer to take advantage of the market news that comes to him by radio during the day. He can load his truck very quickly after he has received the market information or he can withhold his stuff. The truck will get him to market within a few hours after he has the information, for instance, of a rising market. Without having the figures here I would say that about 1,300,000 hogs a year are brought to the Omaha market by truck and about one-quarter of the cattle are [fol. 995] trucked in now. In my section of the country there has been a marked increase in hard-surfaced
1332 roads; and that, with the improvement in trucks, has brought about the increased trucking.

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(53) Arthur H. Judge, Editor of "Canning Trade," Baltimore, Maryland, testified:

"Canning Trade" is a periodical founded in 1878, dealing with information of interest to commercial canners, principally in the fruit and vegetable line. I have been with it since 1895.

1334 In the last five years sales of canned goods for future delivery have gradually dwindled down and been replaced by spot selling to jobbers, chain stores, etc. Eighty percent of the smaller canners have no sales organizations of their own, but depend almost entirely on brokers who sell on a commission of 3 to 5%.

1335 Sales direct to chain stores have increased in the past few years with a beneficial effect on canners in that it takes up the distress lots or spot surpluses—at

low prices, it is true, but still it moves them off the market.

1337-38 It is more expensive to handle small orders than large ones, and therefore less expensive to handle large chain store orders than small individual store orders.

1336 The method of selling to wholesalers has changed in the last few years to this so-called "hand to mouth" buying, which increases the small canner's handling charge. An increase in the number of outlets available [fol. 996] to him would benefit him, that is, on the assumption that the more buyers the better the price. I

1338 think the elimination of the packers from the canned goods market has slowed down the movement of canners' products.

1341 (54) F. H. SIDNEY, Economist, Commercial Research Department, Swift & Company, Chicago, testified:

I have compiled from records of Swift & Company lists of competitiors in the various territories and lines of business in which it operates. These compilations cover a period of more than six months, beginning early last spring, and are contained in the following Petitioners' Exhibits:

No. 79—"Meat competitors doing business in Swift branch-house territories."

No. 80—"Meat competitors doing business in Swift car route territories."

No. 81—"Produce competitors doing business in Swift branch-house territories."

No. 82—"Produce competitors doing business in Swift car route territories."

No. 83—"Wholesale grocers doing business in Swift branch-house territories."

No. 84—"Wholesale grocers doing business in Swift car route territories."

1342 By "branch-house territory" I mean the trade area contiguous to a branch selling house of Swift & Company, in which area that branch does business.

1347 By "car route territory" is meant a group of towns located along certain lines of railway which

are served by a Swift packing plant or branch house by refrigerator peddler car shipments.

[fol. 997] This information was gathered through our branch houses and car route sales managers through
1344 their individual salesmen, and was carefully checked.

1346 Exhibits 79 and 80 classify meat competitors as "local" and "outside," which refer, respectively, to those having establishments located within and without the particular branch-house or car route area referred to and who sell within that area in competition with us. As produce competitors, we include those handling butter, eggs, poultry, and cheese, or any one or more of
1354 these items.

1347 Petitioners' Exhibits 85 and 86 are summaries of the information contained in these previous exhibits as to branch-house and car route territories, respectively.

1353 The concerns listed in these exhibits, 79 to 86, are concerns actually making sales in the respective localities referred to; but there is no attempt to show volume of sales made in any particular instance.

1348 Petitioners' Exhibits 87 and 88 are, respectively, a map and the index thereto listing and showing the location of wholesale grocery houses in the United States, compiled from the Thomas "Wholesale Grocery and Kindred Trades Register," which is the standard reference work customarily used for ascertaining the location of such concerns.

1349 The figures in circles on the map are key numbers referring back to the index which, under the respective state, identifies by that number the town indicated on the map and the number of wholesale houses there located.

1350 Petitioners' Exhibit 89 is a list of meat-packing concerns who handle any of the so-called unrelated articles listed in the fourth paragraph of the Consent Decree of 1920 in this case. It was gathered through our [fol. 998] branch-house and car route managers and salesmen, and indicates actual offerings made by these concerns in these lines in our respective territories.

1352 It does not show which of the concerns therein listed are slaughtering meatpackers and which are

merely processors, though that could be ascertained by reference to these previous exhibits.

1353 Petitioner's Exhibit 90 is a list of chain stores, similarly compiled, which perform meatpacking operations as therein indicated.

1355 (55) ARTHUR A. MILLETT, Assistant Manager, Branchhouse Department, Swift & Company, Chicago, testified:

I have been with Swift & Company 34 years and in the Branch-house Department since 1908, and Assistant Manager since 1928. Branch houses are units located all over the country, used for selling and distributing our
1357 products to our customers. Each is equipped with refrigerated "coolers," and most of them have freezers which carry lower temperatures. Many do processing, such as smoking, sausage manufacture; also candling and grading eggs, and some cut butter. They are split up into 26 different districts, each with a district manager. Each is located in a city which we consider a good central delivery or shipping point, and is dif-
1359 ferent from the plant, of which we have 40 or 41, which is the manufacturing unit where we do slaughtering, dressing, and preparing the meat for market.

1359-60 We have a full organization at each branch house, a manager and in case of a large house we may have an assistant manager. We have a complete sales organization necessary to cover the customers, shipping clerks and the necessary help to do the work in the house, delivery system, trucks and the necessary chauffers and help of that kind.

We have 415 capitalized branch houses and 25 or 26 sub-branches, 440 altogether. Car-lot shipments are made to branch houses from plants, in Swift refrigerator cars, on order of the branch-house manager, and are unloaded into the coolers to await sale. The selling price list is made up [fol. 999] by the branch-house manager for the salesmen's guidance. There is great variation in prices. We know the operating cost of each branch house per 100 pounds, and

would like to be able to add that on the billing price, plus a margin of profit, but many times do not do that.

1361 It is strictly a matter of bargain and sale, and we
1398 determine our selling price according to how our stuff moves. The branch manager is left to vary prices to
1399 meet existing conditions on the market to move his stuff.

1360 A very large percentage of the products sold by our branch houses are perishable.

1361 We sell to retail merchants, grocers, chain stores, if there are any in the town; and to some extent to wholesalers, but not a great deal—mostly concerns who cater to the hotel and restaurant trade.

1361 We have wholesale meat dealers who buy from us and sell in competition with us.

We make sales to chain stores both from plants and branch houses, though there is a great tendency for chains to buy direct in carload lots from us in Chicago or
1362 other points where they can get better and larger
1364 shipments. This takes that business away from our branch houses and has tended to render those facilities unusable, impelling us in the last few years to try to put in some small sub branch houses and work the trade more closely, with an effort to take on the smaller trade, so-called "holes in the wall", operated often, for instance, by a man with a pretty good sized family who opens up a store in his front parlor and buys enough to serve his family and some extra.

1368 Experience has shown that the cost of getting this trade more than offsets the profit upon it, and it has not helped out our branch-house difficulties. It has also been attended by a decrease in the size of individual orders from 119 pounds per order a year or so ago to 105 pounds per order today. This, of course, increases handling costs [fol. 1000] and lowers profits.

Chain stores are able to buy at lower prices than
1369 the independent fellow, both because their buyers are better posted and because the size of business they control helps to keep our perishable products moving and to reduce our branch-house overhead, even if we do not make money on it.

1370 When I was district manager in the Cincinnati territory it was quite common for a chain store buyer to

come in and want to buy some product and upon naming him a price he would say he could buy that product in Chicago cheaper, that he had a wire from Chicago and that the market was a good deal lower there. The chain buyers tried to bring the markets down to a lower level and they are generally known as the lowest level market. If you have a glut in one market the chain store buyer can bring another market that is in a normal condition down to the glut basis by reason of his knowledge of both markets.

Often one of our branches which has been enjoying the business of a substantial chain store buyer for several weeks will place orders on Chicago to anticipate its future demands when it will suddenly leave and place its order elsewhere, leaving us to dispose of this perishable product at a sacrifice price, which also tends to lower the market generally, because the news of a low sale spreads over the market pretty fast and all buyers are keen to take
1371 advantage of it.

We market branded products in premium hams and bacon, Brookfield butter, eggs, and cheese; also oleomargarine, salad dressings, and other items.

1408 Swift and Armour lines are the most extensively advertised lines nationally, and extensively developed. In reading the magazines, I have concluded Swift and Armour are the only consistent national adver-
1409 tisers in hams and bacon and like that. Cudahy may; it may have escaped my attention, but possibly I notice ours pretty regularly. Ours is always there, I think in the Saturday Evening Post continuously.

1372 Chain stores often make leaders out of our brands, leaning to the ones that are nationally advertised, buying them from us at a fair price and then selling
1378 them below cost to attract trade to their stores. This causes an increased demand from retail dealers competing with them for lower prices from us.

1382 The use of leaders is a practice generally under-
[fol. 1001] stood among the retail trade, and their attractiveness in drawing trade to the store depends
1386 upon offering them at a reduced price for a short time, and tends to disappear as competing retailers make corresponding reductions in price. It does not necessarily mean that other dealers try to buy from us at a lower

price in order to meet the leader. It just upsets them
1378 and they refuse to buy from us. They probably take this business to some other packer; and, if the other packers' customers have become similarly dissatisfied, they might come to us. The annoyance is peculiar to us whom they make leaders out of our product. They do not do that all the time. It probably weighs against us more
1388 than the smaller packers because they do not use nationally advertised brands to the same extent as Swift and Armour.

Chain stores feature their own private brands and display them most prominently, while they put ours back somewhere less accessible to the trade. This is detrimental to us.

1374 Voluntary chains operate much like the regular chains, although we have felt their effects more on products like margarine and salad dressings.

1375 There is a growing tendency among chain organizations to do a good deal of their own processing which was formerly done by the packer. By processing I mean smoking their own hams, slicing their bacon, in many cases cutting their own butter, buying their eggs in bulk and candling them and grading them, putting them out under their own brands; things about like we do in our plant, or in many cases, in our branch houses that might be located in the same town in which they have a warehouse. We both would be doing practically the same processing.

1375 Swift branch houses have not been used for handling groceries or canned goods. We did this to quite an extent in 1916 and 1917 and could do so now without any increase in our sales organization and with practically no increase in our distributing expense or overhead.

1377 Our branch houses frequently find themselves glutted with products, requiring serious price cuts, which is not a problem to the retailer. The retailer does [fol. 1002] not buy as far ahead as he used to, but demands more frequent deliveries, sometimes twice a day just
1378 from hand to mouth so as to take advantage of a lower market if it develops.

1379 We sell in keen competition with Armour, Cudahy, Wilson, Hormel, Kingan, and a large number of other

packers in all our different markets.

1380 We never coerce a customer to buy one thing in order to get another that they need, and I do not think that is possible; nor do we refuse to sell customers who buy from certain other competitors or use any other discriminatory or unfair practices toward competitors.

1390 The chief function of a branch house is marketing. We only store there long enough to sell it. Storing, as such, is done at our plants. The big factor in branch-house capacity, therefore, is personnel to handle the trade, although we need sufficient storage space to handle
1391 the flow. As branch-house business decreases, its personnel can be decreased somewhat correspondingly, although as long as we operate a branch we have to have a certain personnel and certain equipment.

1392 Branch houses vary in construction. Originally they were mostly wooden; later of brick, with wooden floors and doors; and, of late years, all concrete throughout. They are usually out a little way from the
1393 business center of the city, perhaps a mile to a mile and a half, located where, in our judgment, we can best supply the trade, not necessarily in the market-
1394 ing section of the city, but on a railroad wherever possible. If not used by us, they would not be practicable for office space, but could possibly be used as warehouse space for other types of produce or wholesale lines. As we have had to discontinue particular branch houses for lack of business volume, sometimes we have been able to sell them, sometimes rent them, sometimes neither. We have had quite a number on the market recently.

1395 Where we sell to chains in carload lots, because that is the way the chain store buyer wants to buy, it is usually cheaper to deliver it direct from the plant than to handle it through a branch house. Although this leaves us with unused branch house capacity, it is a factor in de-[fol. 1003] termining which method of business is going to be most advantageous to us; and when we find business methods change, so that we do not need so much warehouse space, we always have the option to close it up and turn it over to other uses by lease, sale, or otherwise. Our surplus branch house capacity is due to a lessened volume going

through the branch house, not necessarily to a decrease in the total volume of Swift & Company; with that I am not familiar.

1401 The volume of business ordinarily handled in a branch house will range from 50,000 up to 500,000 pounds a week, and one might be profitable anywhere within those limits, depending on conditions. Some are started as sub-branches, and if, after six months or a year, it proves a good location, it may be cut away from the parent

1403 house and made an independent branch. Territory not within a practical distance of a branch house is served by car routes or other facilities, from the plant. There are many small packers that would do a business between 50,000 and 500,000 pounds a week. As a packer's business expands territorially, it is possible to open branch houses to take care of that expansion, i. e., to apportion branch house capacity to the size of the business. If it falls off, we would naturally close and dispose of some that we already operate. In proportion to the size of its business, I think the branch house cost of larger and smaller

1404 packers who use them would run comparatively close. Of course, we cannot reduce branch house equipment and personnel costs in direct proportion as business

1409 falls off, i. e., a 20% decrease in volume would not mean a 20% reduction in costs. We would have to keep at least a skeleton organization up until the time we close the branch.

We could only dispose of branch house space in

1410 case we could discontinue the whole branch. We could not run part of it as a practical matter. We attempt to sell out our branch house products during the week in which received. Good meat can be kept in the coolers from five to ten days, if necessary.

1416 (56) A. O. Nelson, District Manager, Swift & Company, Portland, Oregon, testified:

I am in charge of the Portland District, which includes ten branch houses in Oregon and Washington. I have held this position for 11 years and have been employed by Swift & Co. for 25 years. During the past ten years, there has [fol. 1004] been a considerable change in the character of

our customers, and our outlets have been more or less
1417 restricted on account of the growth of chain stores in our territory, of which there are 19 or 20 systems, chiefly the McMarr group, with 280 stores; Safeway with 140; and Piggly Wiggly, with 40—also in the voluntary chain class; Red and White with 325; Puget Sound Quality Stores with 300; Affiliated Buyers in Portland, with 175; and Purity, with 200; also Federated Stores and
1418 United Stores. None of the voluntary chains was in our territory ten years ago. They have grown up mostly in the last two years. The Red and White and Purity voluntary chains are sponsored by wholesale grocers. Chain buyers are well posted on markets and bear down the wholesale market structure of the country.

1419 The chains feature our branded products in a manner that is detrimental to our business. Not long ago one of the chains featured our Silver Leaf Lard in packages at the opening of a new store. This lard we sold to them at 12½¢ per pound and they put signs on their windows on the day of the opening at 10¢ per pound. The trade objected and caused us quite a little annoyance and trouble. We had a similar case in connection with premium hams at Easter time. In one instance they were advertised in the paper at 3¢ per pound less than the chains paid us for them. This resulted in considerable dissatisfaction among the retailers and independents and many of them returned hams which they bought for Easter as a result of that.

1420 Because of the restriction of our outlets by the development of chains, we have found it necessary to develop smaller customers, whose credit ratings probably were not as good and to whom we have to give extra service which results in increased sales delivery and accounting expense, etc. Many of these accounts have proved to be unprofitable because of the decreased size of individual orders. The average order has decreased in volume during the last few years but there is substantially no difference in the cost of selling and delivering a small as compared with the large order.

[fol. 1005] Our principal competitors in my territory are Armour, Cudahy, Sinclair Provision, a subsidiary of Wilson, and Cudahy Bros. of Milwaukee, also Rath, Morrell, Hormel, and the large packers located on the coast such as

Frey & Co., Karsten Packing Co., James Henry, Seattle Packing Co., Gibson Packing Co., Nebergall Meat Co., and the Valley Packing Co., and some 25 or 26 other competitors who do business in the same way we do and to a more or less extent slaughter and sell at wholesale.

1421 Frey & Company is a slaughtering meat packer in Seattle, which operates about 64 retail meat markets in that territory, through which it sells about 25% of its product, i. e., $3,000,000 out of $12,000,000; the balance at wholesale. In 1920 it had only 18 markets.

1422 Karsten Packing Company has plants at Tacoma and Spokane, Washington, with an annual volume of $9,000,000, of which it sells about 40% through 48 retail markets of its own; the balance at wholesale.

1423 Voluntary chains often designate to their retail members from whom they shall buy their supplies. The purchase of meats by voluntary chains through
1424 their central headquarters applies to a limited extent to smoked meats; but not to fresh meats, to any extent in our territory. Frey and Karsten follow the market in their retail prices; but in case of a surplus, lower the price and move it into consumption more quickly than independent or chain stores. This increases consumption
1427 possibly by those who do not feel able to eat meat at higher prices. Our prices vary as between different purchasers in different localities, as our products are perishable, and we have to sell them at prices that will move them.

1434 In addition to Frey and Karsten, five other small slaughtering packers in the State have between them a total of 15 retail markets. Grocery lines handled by these retail markets are limited to jams, pickles, jellies, condiments, fish, and sometimes bread.

The Frey markets are practically all located in leased space in market sections and are so located that groceries, fresh fruits, vegetables and bakery goods can all be purchased in the same location.

1434 In Washington and Oregon there are 616 regular chain grocery stores and 1240 voluntary chain grocery stores.

[fol. 1006] (57) DAVID DEGAN, Chicago, Illinois, testified:

1651 I am a livestock order buyer on the Chicago stockyards and buy cattle on order for packers located all over the east. I have been in the cattle business 38 years and was previously at various times cattle buyer for Sulzberger & Sons Company, and Wilson & Company who succeeded them. We handle on an average 25 to 30 carloads a week, or 1,300 to 1,500 loads a year, and belong to the Traders' Livestock Exchange.

1654 We do not buy for Armour, Swift, Cudahy, or Wilson, but in competition with their buyers. Sometimes competition on the Chicago market is very
1655 keen; sometimes it is not, depending on the supply and demand.

1657 We are the second largest buyers on the Chicago yards, Moog & Greenwald are first.

1662-9 (58) ALBERT E. HARRIS, Bureau of Animal Industry, Department of Agriculture, Washington, D. C., testified:

I am in charge of meat inspection records for the Department. Federal meat inspection covers all slaughtering and processing meatpacking establishments, any substantial amount of whose products is shipped in interstate or foreign commerce.

Our records show federally inspected meatpacking plants under the names of the following concerns for 1920 and 1930, as indicated in the following table: also which of those in 1930 did slaughtering and which processing only:

[fol. 1007]

Name	1930		1920
	Slaughtering	Processing	
A. & P.		15	
Kroger	2		1
1st Natl.		2	1
Pender		1	
Hygrade	5	5	1
Gobel	3	3	2
Frye	1	1	2
Natl. Dairy	1		1
Genl. Foods		2	
Glidden		1	

The slaughtering plants now shown for the HyGrade, Gobel, and National Dairy concerns were in 1920 and prior thereto separate, independent packing plants which have since been taken over by the amalgamating concerns.

1670 (59) C. B. HEINEMANN, Service Manager, Kennett Murray Livestock Buying Organization, testified:

This concern operates buying offices on 15 leading livestock markets of the country; also at numerous country buying points. I have been in the livestock business in various capacities since 1903, with railroads, meat packers, the National Livestock Exchange, the Institute of American Meat Packers, general manager of the Atlantic Stockyards, and finally with this concern.

[fol. 1008] We do order buying regularly for between 600 and 700 meatpacking establishments located off the yards where the immediate buying is done; also
1673 some for feeders; and in a normal year will handle
1674 5,000,000 head of hogs, 250,000 cattle, and 250,000 sheep.

1673-74 We have bought live stock for packers located in practically every state in the United States, but 95 per cent of our business is done for packers located east of the Rocky Mountains. Our orders are received direct from the packers by telegraph or telephone.

1675-81 We compete with numerous other order buying concerns, yard traders, and commission buyers on the various yards where we operate; and through them numerous packers buy in competition with each other at each of these yards.

1675 On the Chicago market there are approximately 300 outside packers who are constant buyers. I do not mean they will be there every day but perhaps every week. At East St. Louis, approximately 100 outside packers are constant buyers. Indianapolis has approximately 100 outside packers buying there. Omaha has approximately 80 outside packer-buyers; Sioux City approximately 80; Kansas City about 50; Louisville about 15; Montgomery about 60; Nashville 50; Detroit 25; Dayton 18, Fort Wayne 20.

1676 At Chicago there are 16 distinct order buying firms who buy for others outside of the Chicago

market. These 16 separate firms employ a total of 40 buyers. In addition to those, there are 6 commission firms on the Chicago market, with 6 buyers who fill outside orders. There are 225 yard traders, sometimes referred to as speculators, who buy for themselves for the
1677 purpose of reselling. There are a total of 60 buyers representing 20 local packers in the Chicago district and there are 4 outside packers maintaining salaried buyers on the market.

Cincinnati has 5 order buying firms with 16 buyers, 5 commission firms with 14 buyers filling orders and 4 yard traders and 45 buyers representing 22 local packers.

Dayton, Ohio has 1 order buying firm and there are 7 [fol. 1009] local packers at Dayton with 7 buyers and 18 packers located outside of Dayton are constant buyers on that market.

1678 At Detroit, there are 5 order buying firms with 6 buyers and 3 commission firms have 3 buyers. There are 10 yard traders and 25 buyers representing 15 local packers and there is one salaried buyer representing an outside packer.

At East St. Louis there are 14 reorganized order buying firms with 41 buyers, 68 yard traders and 54 buyers representing 25 local killers and 2 salaried buyers representing outside packers.

Fort Wayne has 2 order buying firms with 2 buyers and one commission firm with 2 buyers filling orders, 8 yard traders and 4 local packers employing 4 buyers. Approximately 20 packers buy on that market constantly.

1679 Indianapolis has 12 order buying firms with 35 buyers, 43 yard traders, 37 buyers representing 9 local packers and 2 salaried buyers representing outside packers.

LaFayette, Indiana, has 1 order buying firm with 3 buyers and several commission firms that frequently fill orders. There are 4 local killers with 4 local buyers.

At Louisville, there are 2 order buying firms with 10 buyers and 5 commission firms employing 25 buyers to fill orders. There are 6 buyers representing 15 large and small local killers.

1680 Approximately 10 packers located outside of Louisville buy constantly on the Louisville market and there are seasons when the outside buyer puts salaried employees on that market.

Montgomery, Ala., has one order buying firm with 3 buyers and 4 commission firms that occasionally fill orders, and 4 local killers employ their own buyers.

At Nashville, Tenn., there is one order buying firm and various commission firms that fill orders, 10 yard traders and 2 local packers with their own buyers.

Omaha has 9 order buying firms each with a buyer, 82 [fol. 1010] yard traders and 44 buyers representing 13 local packers, and 3 salaried buyers representing outside packers.

1681 Sioux City has 2 order buying firms, 8 local killers and 3 commission firms that fill orders on the market.

The carload lot is the unit of our service but not infrequently we have orders for a trainload of live stock for one outside buyer. In 1929, approximately 70% of the hogs bought on the East St. Louis market were purchased by order buyers buying for outside packers.

At Indianapolis, 50 to 59% of the hogs and 84% of the cattle and calves and 82% of the sheep and lambs purchased on that market are bought by order buyers for outside packers.

1682 At Nashville, 35% of the cattle, 65% of the calves and 60% of the hogs, and 80% of the sheep and lambs are purchased by order buyers for outside packers.

1682 The competition on the markets at which we oper-
1683 ate is keen and active at all times. My observation is that Armour, Swift, Wilson and Cudahy compete with each other at these various markets.

I have observed the process by which the live stock buying market which falls below others is brought back to a normal level. Where there is an undue depression in market prices at a market, it ordinarily must be from one or two causes—either a lack of buying demand or an overplus of supply. On the markets where we operate where that depression becomes noticeable on any day, we then strive by every means to throw into that market all possible orders with a view of bringing the supply to a normal basis. In other words, to get a demand to match the supply. We are constantly in touch with all the markets on which we operate. If we have orders at Chicago and find that the Omaha market has a lower price for the

grade of live stock desired, we advise our customer to let us replace that order on the market where he can
1684 buy to the best advantage. When switching of buying from one market to another occurs, there is immediately noticeable a stimulant in the buying end of that market, which helps in making the prices more firm. The market is brought back to normal.

[fol. 1011] There are various differentials between markets. The freight differential is one factor. The dressing yield is greater from live stock purchased close to killing. The expense of feeding in transit and the expected mortality of shipping in transit are additional factors. Taking these factors into consideration, it is found in actual practice that while markets sag or rise below or above each other they are brought into a normal level by the
1685 ordinary process of business. The markets have what we call a normal basis.

Our concern has never been the subject of any discrimination with respect to facilities or treatment accorded us.

I am familiar with the markets owned or partly
1686 owned by the defendant packers. The facilities turned over to us at those yards are excellently maintained and operated and we have no complaint or cause for complaint whatever at any of those markets.

I have never observed any unfair practices or sharp trading practices on any of the yards where we operate, in relation either to buyers on the one hand, such as our organization, or to producers.

1688 In buying for our patrons the greater number of our orders are within a price range, that is, with an upper and a lower limit. Sometimes we are permitted to use our own discretion. Out of our 600 or 700 packer customers, probably 350 represent year-round cus-
1689 tomers and include Swift, Armour, Wilson, and Cudahy. That is, we buy in common for these packers steadily, with the discretion to fix the price which we will bid, at least within certain limits, as market conditions or other conditions under which we buy may make desirable. The method of doing business at the various stockyards described above, to my personal knowledge, has continued since 1903.

[fol. 1012] (60) WILLIAM S. WARFIELD, President, Tolerton & Warfield Company, Sioux City, Iowa, testified:

1691 I have been with this concern since 1889. Until 1918 it was strictly in the wholesale grocery and jobbing business. That year we ventured into the retail business with one store and have grown to 105 retail
1692 stores at the present time, of which 36 have retail meat departments.

1693 These 36 stores are general food stores handling fresh meats, groceries, fruits, vegetables and other food stuffs.

The first of these was added in 1926. Our retail
1694 business has grown from $355,000 in 1920 to $4,461,000 in 1929, while our retail meat business in 1929 was $388,000.

1695 We continue our wholesale business in a territory radius of 150 miles from Sioux City, with 12 travelling salesmen.

1696 We also have a plant at Sioux City manufacturing peanut butter, pancake flour, extracts, jelly powder; and we roast our own coffee and pack our own vinegar.

1696 We also own 80 per cent of the capital stock of the Johnson Biscuit Co. of Sioux City, which manufactures crackers, cakes, candies and bread. We control a canning plant at Norfolk, Nebr., where we pack 11 different kinds of vegetables.

1697 We are also among the largest auto tire distributors in Sioux City, and sell gasoline and oil.

1697 Deliveries to our retail stores from our centrally-located warehouses are made principally by truck and in our wholesale business, deliveries, within a radius of 150 miles or so of Sioux City are made by truck. We started making shipments by truck in 1925 or 1926.

1699 Our wholesale business in 1920 was $4,000,000 to $4,500,000 and has fallen now to about $2,000,000.

1700 We were prompted to enter retailing because of the encroachment of the chain stores and found that it tended to alienate our existing retail customers to a great extent.

[fol. 1013] In our wholesale business we use car lot shipments only in canned fruits and vegetables direct
1701-2 from the canning plant, and in fresh fruits and vegetables from our warehouses. Less than car

lot orders are usually shipped by truck; and, in the few instances we cannot reach by truck, we use railroad l. c. l. refrigerator package car service, which runs on most lines out of Sioux City from one to three times a week. We use express very little.

[fol. 1014] (61) WILLIAM S. CLITHERO, Assistant Comptroller, Armour & Company, Chicago, recalled as a witness, testified:

1706 As head of our Research Department, I have prepared a series of statements containing data as to the business of Armour & Company in its various lines from 1920 to 1929. On March 24, 1923, Armour & Company took over the business of Morris & Company, who previously operated separately; but I have had access to the latter's figures for previous years since 1920 and have included them with the Armour figures for purposes
1708 of comparison. These statements, therefore, contain the combined figures for Armour and Morris both while operating separately and independently prior to March 24, 1923, and while operating under Armour control since their merger on that date.

1708-9 Petitioners' Exhibit 105 shows the combined Armour and Morris volume of sales, net worth, net results (or profits), and ratio of earnings to sales and to net worth. Where figures are in red, they indicate a loss instead of a profit. The fiscal year was changed during this period; and, where the figures are for other than an even year, the notes at the bottom indicate the number of weeks embraced. This explains the discrepancy between the net loss of 3.98% shown here for 1922 and one of 3.40% shown for the same year in Petitioners' Exhibit 72. In the latter the loss is adjusted to refer to the calendar year, while in the former it relates to a fiscal year of 61 weeks.

1710 Petitioners' Exhibit 106 is a break-down of the previous one, as between Armour and Morris from 1920 up to the time of their merger.

1711 Petitioners' Exhibit 107 shows our volume of do-
1712 mestic sales of edible products, in which we include everything that could be used for human food, while Exhibit 108 shows the proportion of these that are

meat and meat products, by which I mean all food products that come from cattle, hogs, sheep, and calves.

1777 The last two exhibits (107 and 108) do not include our export trade, which is very substantial, but I cannot state its size or proportions to domestic sales.

[fol. 1015] Petitioners' Exhibit 109 shows the proportions in which our sales of edible products for the month

1713-4 of August, 1930, were divided among our various classes of customers, while Exhibit 110 shows our total sales to chain store concerns for 1928, 1929, and 1930, and to our largest single customer, which is a

1776-7 chain store, for the year 1930, and its percentage to the total chain store business for that year. These figures include both sales to chains through their centralized buying offices and those made on orders at the option or discretion of local store managers. While there has been no segregation, the latter would represent about 25% of the totals here given.

1715-6 We did not keep data as to chain store sales prior to 1928. These chain figures do not include sales to voluntary chains.

1717 Petitioners' Exhibit 111 is a financial record of Armour & Company in thousands of dollars, from 1920 to 1929. For 1920 to 1923 the top figures are for Armour alone, and the combined Armour-Morris figures prior to the merger are given below.

1718 By "net worth", as used in these exhibits, I mean capital stock and surplus, which represents the stockholders' equity in the business and which would be called the invested capital at any given time.

Petitioners' Exhibit 112 shows the detail of this net worth of Armour & Company. The first three columns show the preferred stock issued and outstanding of Armour of Illinois, Armour of Delaware, and the North American Provision Company, which latter is a subsidiary of Armour of Delaware and took over the Morris properties on their acquisition. The fourth column is the outstanding common stock in Armour of Illinois.

[fol. 1016] Petitioners' Exhibit 113 shows the volume of Armour business in "unrelated lines," 1919 to 1930,

1720 by which I mean those commodities specified in the fourth paragraph of the Consent Decree of 1920.

1722 Petitioner's Exhibit 114 shows the tonnage vol-
ume of Armour's domestic sales, 1920 to 1929, sepa-
1773 rately in meat and meat products and in the various non-meat lines therein specified. It does not cover canned vegetables, which, however, are included in the total dollar sales in Exhibit 108.

1724 Petitioners' Exhibit 115 shows our purchases of
1725 livestock by species on the 10 leading livestock markets of the country for this ten-year period; and Exhibits 116 and 117 show points at which we purchased hogs direct in 1929 and the first half of 1930, as contrasted with purchases on public markets. These do not, how-
1770 ever, include our hog purchases at the Mistletoe yard at Kansas City, Kansas, nor the places from which shippers made shipments to that yard.

1725-6 Petitioners' Exhibit 118 is a list of the domestic subsidiaries and affiliated companies owned by Armour of Illinois and the percentage of voting stock owned or controlled in each. That exhibit lists as sub-
1733-5 sidiaries of Armour & Company the National Fruit Canning Company, of Seattle, Washington, of which, according to the exhibit, Armour & Company owns 87½% of its capital stock; and a plant at Westfield, New York, which is engaged in fruit preserving and jelly making. The former plant does an annual business of $3,500,000, according to my memory. Armour of Delaware also has subsidiaries, the principal of which is the North American Provision Company, holder of the Morris busi-
1735-6 ness. Armour does not control those companies here listed in which it owns less than 50% of the stock. The remaining stock of Julius Dahlman, Inc., Brooklyn, New York, is owned by Julius Dahlman, and of Meyer & Busch Company, Newark, New Jersey, by Mr. Busch. I do not know who owns the remaining
1761-3 stock of the Iowa Rendering Company. This list does not include the General Stockyards Corporation, in which Armour holds 32,000 shares or 35% of the total, and which in turn owns portions ranging from 4% to [fol. 1017] 36% in the capital stock of the six public stockyard market companies scattered over the United
1764 States, and one in Canada. Neither does the list include the Armour ownership of 59.5% of the stock

in the Jersey City stockyard Company, which is leased from the Pennsylvania Railroad.

1762 In the fall of 1927, Arthur H. Bosworth, as a member of the banking firm of Bosworth, Chanute, Loughridge & Co., of Denver, Colo., who had purchased Armour and Company's stock in the Denver Union Stock Yards Co., opened negotiations with Armour and Company with the view of purchasing all of its stock in stock yard companies. Mr. Bosworth associated with him in this transaction the banking firm of Stone & Webster and Blodgett, Inc., of New York and Chicago. As a result of negotiations which followed Armour and Company, on January 11, 1928, sold to the General Stock Yards Corporation its entire interest in Ft. Worth Stock Yards Co., Sioux City Stock Yards Co., St. Paul Union Stock Yards Co., Union Stock Yards Company of Toronto, St. Louis National Stock Yards Co., and Bourbon Stock Yards Co. As a part of this transaction Armour and Company
1763 acquired 32,000 shares of the capital stock of General Stock Yards Corporation, representing a 34.97% stock interest in that company. The General Stock Yards Corporation was organized by the banking firms mentioned independently of Armour and Company, and was incorporated under the laws of Delaware January 11, 1928, and is what is commonly known as an investment trust. Armour and Company does not hold any
1764 stock at any stock yards company other than 59½% interest in the Jersey City Stock Yards Co.

1726-8 Petitioners' Exhibit 119 shows the number of branch-houses operated by Armour & Company, including the Morris Business, each year from 1920 to 1929. This includes all branch houses operated either by the parent company or any of its subsidiaries. They are located according to trade conditions.

[fol. 1018] Petitioners' Exhibit 120 shows the volume of our branch-house sales annually from 1920 to 1929.

1729 Petitioners' Exhibit 121 shows refrigerator cars
1730 owned by Armour & Company each year for the same period; also the combined Armour and Morris refrigerator car holdings in 1920 and a comparison of that figure with the figure for 1929.

1732 Petitioners' Exhibit 122 shows the number of car
1736 routes operated by Armour and Company with its own refrigerator cars, each year from 1920 to 1930,

while No. 123 contains my estimate of the number
1735-6 of towns in Armour branch-house and car route territories served by us in 1930. The reduction in car routes shown since 1920 represents car routes replaced by motor truck and railroad refrigerator service. As railroads increase their refrigerator cars and we can use that service, we do so.

1737-9, 1760 Petitioners' Exhibit 124 shows by months since August, 1929, in dollars, the business done by Armour & Company in non-meat food commodities listed in the fourth paragraph of the Consent Decree. The consignment sales listed in the third column represent sales for the account of others and are in addition to the business represented in the preceding columns.

[fol. 1019] Petitioners' Exhibit 125 is a statement of companies whose business assets and fixed properties
1739 have been purchased by Armour & Company since 1920, together with the commodities they handled, their volume of business before and after acquisition, the territory they served, and the Armour units serving that territory prior to purchase and their volume of business.

1741 Petitioners' Exhibit 126 is a file of Armour & Company annual financial reports for the years 1921 to 1929, which include the business of all Armour subsidiaries, wholly or partly owned or controlled.

1757-9 The improvements in Armour's financial condition since 1923, referred to in the 1928 report, were accomplished principally by the conversion of fixed assets into liquid assets, the payment of debts, and the reduction of inventories—the result of which, as Mr. White suggests, was to place Armour & Company in a very strong position as compared with the beginning of the period.

1742-3 Armour operates 1,300 truck routes. Of these, those handled by 250 trucks, mostly operated by general trucking concerns, have replaced 109 route cars that have been taken out of service.

1744 The data contained in paragraph 23 of the Armour petition for modification in this case, headed "Changes in capital stock, funded debt, etc., since February, 1920", was prepared by me from our records and is correct. Armour & Company has 26,000 common stock holders and 54,000 preferred. Both are voting stocks with

equal rights, share for share, and it requires 1,600 stockholders to make up a majority of the total voting power.

In 1920 all of Armour's common stock was con-
1745 trolled by the Armour family, and there were 7,400 preferred stock holders. No one family controls the company's voting stock now.

[fol. 1020] Petitioners' Exhibit 127 is a financial record of the Kraft-Phenix Cheese Corporation since
1745-6 1924, with the history of its organization, and its acquisition in May, 1930, by National Dairy Products Corporation, prepared from Moody's Industrial Manuals.

Petitioners' Exhibit 128 is a similar statement for the Glidden Company, prepared from the same source.

1747-9 Petitioners' Exhibits 129 to 134 are six volumes prepared on the basis of questionnaires sent out through our research department to branch-house and car route managers and salesmen. They list competitors operating in Armour & Company branch-house and car route territory in the meatpacking, produce, and wholesale grocery businesses. In produce we include butter, eggs, cheese, and poultry, or any one or more of them.

(The last named exhibits are substantially similar to Petitioners' Exhibits 79 to 84, giving the same information as to competitors of Swift & Company. It is conceded that both Swift & Company and Armour & Company do business throughout the United States and that each encounters substantially the same competitors and numbers thereof as does the other in all their respective trade areas.)

1755 Under meat competitors in Exhibits 129 and 130, we include all concerns selling meats to the retail trade, whether they do their own slaughtering or not.

1749-50 Petitioners' Exhibit 135 is a list of wholesale grocers owning and operating retail stores in 1930, with their location and the number of stores operated in 1920, and the number of the stores operated that contained meat departments.

1750-1 In addition to the six chain store concerns (A. & P., American, Bohack, Kroger, First National, and Pender) operating federally inspected packing plants, as testified to by Mr. Harris, of the Bureau of Animal In-

dustry, data which I have prepared shows other concerns with meatpacking establishments that operated a total of 698 retail stores in 1930 as compared with a total of 199 [fol. 1021] in 1920. I do not know the number of concerns nor that they all have federal inspection, but they were classified as meat dealers or packers.

Out of the defendants named in the Consent De-
1752-3 cree of 1920, Armour & Company of Texas was dissolved March 23, 1923; the Colorado Meat & Provision Company was dissolved June 28, 1923; J. Ogden Armour died August 16, 1927; Charles W. Armour died March 22, 1927; Frederick W. Crowell severed all connection with Armour or its subsidiary companies August 2, 1924.

In addition to the edible products referred to in
1786 the exhibits I have identified, Armour & Company manufactures a list of inedible products the principal of which are hides, fertilizer, greases of various kinds, and soap.

1660, The following stipulation of fact and testi-
1794-1859 mony was admitted and received in evidence:

[fol. 1022] STIPULATION OF FACT AND TESTIMONY

It is stipulated that T. Henry Foster, if called as a witness by petitioners for modification in these proceedings, would testify—

That he is president of John Morrell & Co., a corporation, engaged in the meat packing business, with general offices at Ottumwa, Iowa, having packing plants at Ottumwa, Iowa, and at Sioux Falls, South Dakota, which plants cover approximately 150 acres of land and are modern and fully equipped;

That the aggregate annual capacity of Morrell & Co. is 2,500,000 head of hogs, cattle and sheep;

That Morrell & Co. owns fifteen branch houses, 400 refrigerator cars, and leases an additional 200 refrigerator cars from the Union Refrigerator Transit Company;

That Morrell & Co.'s slaughterings of hogs, cattle, calves and sheep during the years 1920 to 1929, inclusive, were as follows:

Year	Hogs	Cattle	Calves	Sheep
1920	786,055	81,483	7,449	9,879
1921	886,283	72,827	6,879	13,074
1922	1,085,213	94,826	7,328	10,303
1923	1,349,775	106,284	10,012	7,449
1924	1,540,197	118,472	12,348	5,928
1925	1,353,120	140,136	15,513	7,068
1926	1,453,820	172,583	16,326	11,517
1927	1,561,461	170,634	16,709	14,833
1928	1,775,817	182,224	11,519	12,557
1929	1,857,197	200,937	12,112	17,501
Total	13,648,938	1,340,406	116,213	110,109

Grand Total of All Animals

13,648,938 hogs
1,340,406 cattle
116,213 calves
110,109 sheep

15,215,666 animals

That the total sales in dollars of Morrell & Co. for the ten years 1920 to 1929, inclusive, were as follows:

[fol. 1023]

1920	$51,944,907.09	
1921	44,380,045.81	
1922	52,690,536.93	
1923	57,178,362.76	
1924	60,950,766.39	
1925	74,657,012.66	
1926	81,393,108.66	
1927	76,250,174.88	
1928	84,651,597.62	
1929	101,976,252.42	(13 months)

That thirteen months' sales are included in the last figures given in the preceding table by reason of the fact that Morrell & Co. made a change last year in its fiscal year period;

That Morrell & Co.'s invested capital, or net worth, on November 2, 1929, amounted to $20,000,000, of which sum $4,213,817.32 constitutes surplus;

That the net earnings of Morrell & Co. for the thirteen months' period ended November 2, 1929, amounted to $3,435,799.42;

That Morrell & Co.'s net earnings from 1924 to 1928, inclusive, were as follows:

1924	(year	ended	March	31)	.....	$2,223,840.00
1925	"	"	"	"	.....	2,939,806.00
1926	"	"	"	"	.....	1,336,733.00
1927	"	"	"	"	.....	1,906,782.00
1928	"	"	"	"	.....	1,591,488.00

That Morrell & Co. buys practically all of the livestock killed in its Ottumwa plant directly from producers located near that community. Hogs are shipped directly to the plant by producers, and purchases are made at the prevailing market prices on the dates of sale less freight differential. The Company sends buyers into the country to purchase cattle. The plant at Sioux Falls, South Dakota, obtains its requirements of livestock by direct purchases, and also by purchases on the public market located at Sioux Falls. Extensive and active competition is encountered by the Company in the purchase of livestock at all times. The producers are well informed regarding receipts and prices on public market, and the Company cannot acquire livestock except by paying the market price less the differential;

That Morrell & Co. sells meat in every State of the United States and in England, Continental Europe and other foreign countries. Approximately 35 per cent of the Company's sales are made through its branch houses and [fol. 1024] the balance by the route car method and by trucks. The Company has its trucking done under contract with Redman of Ottumwa, who trucks to Chicago, Haw Dagitt of Ottumwa, and Mercer of Burlington, who truck in Iowa. Extensive and active competition is encountered at every place where the Company sells meats. The Company sells its privately branded products;

That Morrell & Co. has business relations with Swift & Company and Armour & Company, and both buys from and sells to these corporations. Morrell & Co. has always found the business methods and dealings of Swift and Armour to be fair;

That Morrell & Co. has no difficulty in competing with the larger packers. It can buy livestock on the same basis as the larger packers and just as cheaply, and has no difficulty in selling meats in competition with the larger packers, but on the contrary is on a more favorable competitive basis because the overhead and selling expense of the small

packer are less proportionately than that of the larger packers;

That Morrell & Co. sells commodities other than meat and meat products, which commodities include orange marmalade; plum pudding; beans, including Du Page Red Kidney, Yorkshire Farm Fancy Whole Green Beans, and Riverdale Cut Green Beans; condiments, including Exposition Brand Yellow Mustard, Exposition Brand Horseradish, Yorkshire Farm Yellow Mustard, and Yorkshire Farm Horseradish; peas; hominy; pumpkin; sauer kraut; tomatoes; catsup; corn, including Yorkshire Farm Fancy Country Gentleman Corn, Yorkshire Farm Fancy Crosby Corn, and Riverdale Standard Iowa Sugar Corn; beans (dry), including C. H. P. Michigan Pea, and Great Northern; mincemeat; margarine; cheese; milk; eggs; fruits, including apples, apricots, blackberries, and cherries; peanut butter; and other food products;

That Morrell & Co. by experience has found that dealing in grocery items and other non-meat food products results in reducing the cost of doing business, especially at branch houses where at times the available supply of packing house products is insufficient to keep their sales force busy;

That Mr. Foster finds keen and active competition existing at present in both the buying of live stock and the selling of meats, and also finds that the entire food industry [fol. 1025] is highly competitive; in his opinion monopoly in the packing industry and in the general food industry is an impossibility because there is no possible way of controlling the raw materials, the commodity dealt in is perishable, and the business can be entered with limited capital.

It is further stipulated that JOHN W. RATH would testify as follows:

That he is president of the Rath Packing Company, of Waterloo, Iowa, and has been president of that Company since 1898;

That the Rath Company's plant, occupying about twenty acres of ground, is located at Waterloo, Iowa. It is a large and thoroughly modern plant, and has been supplemented by two large buildings, a tank house and a manufacturing and storage building erected within the last two years.

Fixed assets are carried on the Company's books at a net depreciated value of $2,831,500.00;

That the business has grown from a slaughter of 200,000 hogs a year and a very few cattle in 1920 to a slaughter of 980,000 hogs and 40,000 cattle in 1929. The Company's sales have increased from $8,000,000 in 1920 to $33,932,000 in 1929;

That the Rath Packing Company has nine branch houses located in Texas (three branches), California (two branches), Washington, Iowa, and Illinois (two branches). It does not own any refrigerator cars but leases its refrigerator cars from the North American Car Company. It has no difficulty in obtaining the cars it requires;

That livestock is purchased by country buyers and over the telephone and at the Waterloo plant. Occasional purchases are made on the public market. The livestock shipped directly to the plant is purchased at the prevailing market prices less freight from point of origin. Keen and active competition is encountered in the purchase of livestock. The producers who sell directly to the plant are well informed regarding market conditions. The Company maintains a radio in its office and also at its private yard adjacent to the packing plant;

[fol. 1026] That the products of The Rath Packing Company are sold throughout the entire United States and also in Great Britain, Continental Europe and other foreign countries. The Company markets its products under its own private brand names;

That keen and active competition is encountered at all places where the Rath Company sells its meats and packing house products;

That the distribution of meats is made not only by car route and through branch houses but also by motor truck; the Rath Company owns and operates thirty trucks out of Waterloo;

That the Rath Packing Company has business relations with Swift and Armour, and has always found their business methods to be fair;

That the Rath Company has no difficulty in competing with the larger packers; it is able to buy its livestock on the same basis as the larger packer and can successfully compete with the larger packer in the selling of meat;

That the Rath Company in addition to meat and meat products sells fish, vegetables, fruits, jams, jellies, sauer kraut, cheese, butter, and butterine;

That Mr. Rath finds strong competition in the buying of livestock and in the selling of meat products and other foods dealt in by his Company; in his opinion monopoly is not possible in the packing or other food industries because of the inability of any one or of any small group to control the raw material, and because of the perishability of the commodities dealt in and the fact that the business can be entered with limited capital.

[fol. 1027] It is further stipulated that WILLIAM E. PRICE would testify as follows:

That he is first vice-president and general manager of Jacob Dold Packing Company, Buffalo, New York, who are engaged in meat packing and other food lines;

That the Dold Company owns packing plants at Buffalo, New York, and Wichita, Kansas; has about twenty-five branch houses located in different parts of the United States and has wholesale markets at Chicago, Indianapolis, and St. Louis;

That the Dold Company in addition to meats and meat products deals in fish, groceries, coffee, cocoa, catsup, mayonnaise, dry beans, dry peas, red jelly, pure jams, vinegar, fruit, syrups, honey, canned vegetables and canned fruits; pickles, olives, noodles and prunes; about 10 per cent of the Company's entire business is in food products other than meats and meat products;

That the Dold Company's sales in 1920 amounted to $56,512,175, and in 1929 to $55,558,597, and in the years intervening between 1920 and 1929 were as shown in Mood's Manual of Industries;

That the Dold Company finds that its motor truck transportation delivery of products has greatly increased since 1920 and that chain store buying has greatly increased since 1920; that there is no shortage of refrigerator cars, all such cars as are needed in its business are readily available to it;

That the Dold Company is in strenuous competition with Swift & Company and with Armour & Company and with other packers and food concerns;

That Mr. Price finds the methods of Swift and Armour and other competitor packers are entirely fair;

That Mr. Price is of opinion that it is impossible to have a monopoly in the meat packing business.

[fol. 1028] It is further stipulated that FRANK M. FIROR would testify as follows:

That he is President of Adolph Gobel, Inc., and that the present company was incorporated August, 1926, as a successor to a company of the same name founded in 1891; that the company and its subsidiaries manufactures and sells fresh and cured meats of practically all kinds and also sells fish, mustard, horseradish and pickles and as well operates cafeterias and lunch stands as hereinafter shown; the company distributes its products by sale to delicatessen stores, butchers, restaurants, groceries, and to a chain of its own retail stores operated by a subsidiary as hereinafter stated in this stipulation.

That during the last few years the Company has pursued a policy of expansion and acquired a number of businesses similar to that of the Gobel Company in localities where Gobel products could be advantageously marketed. In carrying out this expansion program, the Company has acquired since 1926 all of the common and preferred stock of George Kern, Inc., New York; all of the stock of Hertz Bros., Inc., Milton, Pa.; all of the common and convertible preferred stock of Merkel, Inc., Jamaica, Long Island; all the stock of C. Lehman Packing Company, Brooklyn, New York; all the stock of United Sausage Company, Boston, Mass., of Playland Refreshment Corporation, of the Howard Provision Company, and has also acquired all the stock of Keane-Loffler, Inc., of Washington, D. C., and in 1929 acquired over 96 per cent of the common stock of Jacob A. Decker & Sons, of Mason City, Iowa.

That the nature and extent of the businesses of the above-named subsidiary corporations are:

George Kern, Inc., New York: This company owns a large packing plant at 11th Avenue and 40th Street, New York, with complete equipment for killing and dressing hogs, as well as processing and curing meats.

Hertz Bros., Inc.; Owns a provision house at Milton, Pa.

Merkel, Inc.: Operates a large provision plant at Jamaica, Long Island, and also operates 30 retail meat stores located

in Jamaica, Brooklyn and Jersey. The stores are known as the Merkel Chain. The retail sales amount to more than $2,000,000 a year, and were $1,411,632.51 during the first 32 weeks of 1930. In 1920 the retail sales were less than [fol. 1029] 25 per cent of the present sales. The business of Merkel, Inc. could have been purchased for $125,000 in 1922, but the purchase price paid in 1928 was $2,000,000. The company's plant was erected in 1922.

Playland Refreshment Corporation: This Company is engaged in the concession business, such as soda water, ice cream, candy, frankfurters, etc., and operates concessions at Playland Park, and Rye Beach, New York.

Keane Loffler, Inc., Washington, D. C.: This Company was organized in 1928 to take over three businesses formerly carried on under the names of A. Loffler Provision Co., T. F. Keane Company and Keane Provision Co. The company owns and operates two meat packing and provision plants and an abattoir and also four wholesale and retail meat markets in Washington, D. C. The abattoir kills on a fee basis. All the killing is Kosher.

Jacob E. Decker & Sons, of Mason City, Iowa: The business of this company was established in 1899. It was incorporated in 1901. It owns and operates a large modern packing plant at Mason City, Iowa, having a daily capacity of 5,000 hogs. It kills approximately 600,000 hogs a year. The company owns 190 refrigerator cars and operates nine branch houses located at Minneapolis, Minn., Little Rock and Texarkana, Ark., and in Dallas, Beaumont, Houston, San Antonio and Tyler, Texas. Its products are sold directly and through all of the Gobel subsidiaries, including the Merkel Chain of retail stores.

That other subsidiaries of the Gobel Company are:

C. Lehman Packing Company, Brooklyn, New York.

United Sausage Company, Boston, Mass., with a packing and provision plant at Boston.

Howard Provision Company, operating a stand in West Washington Market, New York.

That the company sells its products all over the United States.

That buying of live stock for Adolph Gobel, Inc. and its subsidiary companies is all conducted from New York, with the exception of the buying of Jacob E. Decker & Sons.

This company buys 75 per cent of its live stock directly at its plant and the balance at public markets. The buying of live stock, exclusive of the Decker buy, is done through order-buyers. Purchases are made at all the principal markets. Order buyers call the New York office by telephone each morning and report regarding market receipts and prices. The Company keeps in close touch with receipts and prices at the public market and places its orders at the markets which it considers the most favorable. The company also makes some purchases of live stock at [fol. 1030] private yards and has a concentration point in Muncie, Indiana.

That keen and active competition is encountered in the purchasing of live stock at all markets and in the country. The company is able to buy live stock as advantageously as any other packer, and has the same opportunity for buying as Armour and Company or Swift & Company.

That the distribution of meats and packing house products, particularly in the East, is made largely by trucks.

That active competition is encountered in selling in all places where the company is engaged in business.

That it is further stipulated and agreed that JAMES S. AGAR, if called as a witness by petitioners, would testify that he is the President of Agar Packing and Provision Company of Chicago; that said Company is engaged in commission slaughtering and the general meat packing business and has two packing plants located at Chicago; that said plants consist of a five-story and basement building with a chilling capacity of 3,000 cattle and 2,000 hogs, a six-story tank house, a five-story abattoir equipped for slaughtering 400,000 hogs and 75,000 cattle annually, and other buildings; that keen and active competition is encountered by the Company in the purchase of live stock and in the sale of the products thereof and that there does not exist at the present time any monopoly in the packing industry.

That it is further stipulated and agreed that BERNARD J. BRENNAN, if called as a witness, would testify that he is the President of Brennan Packing Company; that said Company is engaged in the general packing business at Chicago and has a plant at Chicago having a capacity for the slaughter of 1500 hogs a day and a capacity for the cold

storage of 17 million pounds of meat and that the facts relating to its sales, earnings, etc., are correctly set forth in petitioners' Exhibit No. 71; that there exists at the present time keen and active competition in the purchase of live stock and in the sale of meat and meat products, and that no monopoly exists in the packing industry.

That it is further stipulated and agreed that R. C. DICKINSON, if called as a witness, would testify that he is the Vice President of Louis Burke, Inc. of Philadelphia; that said Company is engaged in the general packing business [fol. 1031] and owns and operates a packing plant located at Philadelphia, Pa., that the said Company purchases hogs on the Pittsburgh, Buffalo, Cincinnati, and Indianapolis markets through order buyers; that a satisfactory competitive condition exists in the industry and that the defendant packers do not control the business generally or at any particular place or operate in any manner in restraint of trade.

That it is further stipulated and agreed that HIRAM R. ELLIOTT, if called as a witness, would testify that he is the President of Elliott Packing Company of Duluth, Minnesota; that said Company slaughters about 1500 hogs and about 400 cattle per week and purchases its live stock directly from live stock producers located in the territory surrounding Duluth; that he is also President of the Northern Packing Company located at Grand Forks, North Dakota and that said Company slaughters approximately the same quantity of live stock as is slaughtered by said Elliott Packing Company; that there is plenty of competition between the defendant packers and between all packers both in the purchase of live stock and in the marketing of the products thereof.

That it is further stipulated and agreed that MORTON FOX, if called as a witness, would appear and testify that he is the President of Greenwald Packing Company located at Baltimore, Maryland; that said Company slaughters from 1100 to 1200 head of cattle per week and does a business of approximately $5,000,000 per year; that said Greenwald Packing Company does a larger business in the Baltimore territory than is done by either Armour and Company or Swift and Company; that active competition exists

in the industry and that there is no monopoly at the present time in any phase of the packing industry and that there is no danger of a monopoly being acquired by any packers.

That it is further stipulated and agreed that GEORGE L. FRANKLIN, if called as a witness, would appear and testify that he is the President of Dunlevy-Franklin Company located at Pittsburgh, Pa.; that said Company slaughters from 1000 to 1500 hogs and approximately 200 cattle per week and sells dressed and fresh beef and pork products in and around Pittsburgh; that said Company does an intrastate business only and is not under Federal inspection [fol. 1032] but that the products of said Company are sold in direct competition with the products of the defendant packers; that said Company buys its live stock on the St. Louis, Chicago and Indianapolis markets and encounters extensive and active competition both in the purchase of live stock and in the sale of the products thereof.

That it is further stipulated and agreed that JAMES A. GALLAGHER, if called as a witness, would appear and testify that he is the President of Union Meat Company, which is located at San Antonio, Texas and engaged in the packing business; that said Company buys its live stock directly from producers and upon the San Antonio market and sells its products largely locally; that it encounters active competition in the purchase of live stock and in the sale of the products thereof.

That it is further stipulated and agreed that MAX HAHN, if called as a witness, would appear and testify that he is the President of the Max Hahn Packing Company located at Dallas, Texas; that said Company is engaged in the business of slaughtering hogs and cattle and marketing the products thereof; that it buys its live stock directly from producers and upon the Fort Worth market and encounters active competition both in the purchase of live stock and in the sale of the products thereof.

That it is further stipulated and agreed that JAY C. HORMEL, if called as a witness, would appear and testify that he is the President and General Manager of George A. Hormel & Company; that said Company owns and operates a packing plant located at Austin, Minnesota and oper-

ates 14 branch houses; that it is engaged in the general packing business and slaughters all classes of live stock and also deals in poultry products, fish, malt syrup, relishes, sauerkraut and other food products; that the Company purchases its live stock directly from producers and also on the public market and encounters active and extensive competition both in the purchase of live stock and in the sale of meats and other products in which the Company deals; that there does not exist at the present time any monopoly in either the purchase of live stock or the sale of meats or meat products and that the witness is of the opinion that it would not be possible for any concern or group of concerns to acquire a monopoly in either [fol. 1033] the packing industry or the food industry generally; that the facts relating to the Company's sales, earnings, etc. are correctly set forth in petitioners' Exhibit No. 71.

That it is further stipulated and agreed that MYRON MCMILLAN, if called as a witness, would testify that he is the President of J. T. McMillan & Company of St. Paul, Minnesota; that said Company owns and operates a packing plant at St. Paul, Minnesota, at which it slaughters live stock and also manufactures and processes carcass hogs which it purchases from Jacob E. Decker & Sons of Mason City, Iowa; that said Company purchases live stock directly from producers in the vicinity of St. Paul and also on the St. Paul public market and sells its meat products principally within a radius of 200 miles of St. Paul though it also makes sales at distant points through brokers; that the Company encounters active and extensive competition in the purchase of live stock and in the sale of the products thereof; that there is located at St. Paul a packing concern known as the United Packing Company which kills cattle for six or eight wholesale beef houses located in St. Paul and Minneapolis and that said United Packing Company sells more dressed beef in Minneapolis and St. Paul than Armour and Company and Swift and Company combined; that the witness is of the opinion that it would not be possible for any packers or group of packers to achieve a monopoly in the packing industry.

That it is further stipulated and agreed that AUGUSTUS MILLER, if called as a witness, would testify that he is the

President of Charles Miller & Company of Secaucas, New Jersey; that said Company is engaged in the pork packing business and slaughters from eight to ten thousand hogs a week; that the Company is not engaged in manufacturing except as to lard but sells dressed hogs; that the Company purchases its live stock upon the Buffalo, Pittsburgh, Indianapolis, Toledo and Chicago markets, and encounters most active competition in the purchase of live stock and in the sale of dressed hogs; that there is no monopoly in the packing industry at the present time and in the opinion of the witness such a monopoly could not be acquired.

That it is further stipulated and agreed that J. C. PAYTON, if called as a witness, would testify that he is the President of Payton Packing Company located at El Paso, [fol. 1034] Texas; that said Company is engaged in the general packing business and that active and extensive competition exists both in the purchase of live stock and in the sale of the products thereof; that there is no monopoly in the packing industry and that in the opinion of the witness such a monopoly could not be acquired.

That it is further stipulated and agreed that A. J. RIESTER, if called as a witness, would appear and testify that he is the President of William Zoller & Company, meat packers located at Pittsburgh, Pa.; that said Company slaughters from 1800 to 3000 hogs a week and also slaughters cattle and lambs; that it sells its products locally through salesmen to retail butcher shops, delicatessen stores and hotels and makes deliveries by trucks; that the entire packing industry is highly competitive; that no monopoly exists therein and that in the opinion of the witness such a monopoly could not be acquired.

That it is further stipulated and agreed that HOMER H. SMITH, if called as a witness, would appear and testify that he is the Secretary of the Drummond Packing Company of Eau Claire, Wisconsin; that said Company is engaged in the pork packing business and slaughters approximately 60,000 hogs per year, which are purchased directly from producers located in the vicinity of Eau Claire; that the Company sells its products within a radius of fifty or sixty miles of Eau Claire and makes deliveries by trucks and also sells its products through a large retail meat market owned

and operated by the Company at Eau Claire; that there is most active and keen competition among all packers both in the buying and selling end of the business.

That it is further stipulated and agreed that FRANK J. SULLIVAN, if called as a witness, would appear and testify that he is the President of Sullivan Packing Company of Detroit, Michigan; that said Company is engaged in a general packing business; that its plant is located at Detroit, Michigan and that the Company has two branch distributing houses, one located in Detroit and the other in Toledo and that its sales in 1929 amounted to $9,741,732.00; that the Company encounters keen and extensive competition both in the buying of live stock and in the selling of meat and meat products; that no monopoly exists in the packing [fol. 1035] industry and that in the opinion of the witness it could not be possible for any packer or group of packers to acquire such a monopoly.

It is further stipulated that the individuals, firms and corporations, engaged in the meat packing business in the United States, to the number shown or which may be shown by evidence in this case, owned and controlled independently of each other, are in active competition with each other in the purchase of live stock and in the sales of their products in the various geographical localities and districts within the United States in which they respectively purchase and sell.

It is further stipulated and agreed that during the year 1924 WILSON & Co. (INC.), a corporation organized under the laws of the State of New York and one of the primary defendants herein, was negotiating an extension or renewal of its matured and maturing bank loans and certain creditors of said Company instituted suits against it and other creditors threatened to bring suits and to attach its property; that on August 26, 1924, a creditor of Wilson & Co. (Inc.) filed a Bill of Complaint against it in the District Court of the United States for the Southern District of New York alleging that said Wilson & Co. (Inc.) was insolvent and praying for the appointment of a receiver to take charge of and conduct its business; that on said August 26, 1924, Wilson & Co. (Inc.) filed its Answer in said suit admitting the allegation of said Bill of Complaint and joining

in the prayer for the appointment of a receiver and on August 26, 1924, said District Court entered an order appointing receivers to take charge of the properties and operate the business of Wilson & Co. (Inc.); that thereafter ancillary receivers of Wilson & Co. (Inc.) were appointed by the United States District Court in various districts where properties of Wilson & Co. (Inc.) were located and such receivers did after the dates of their respective appointments take charge of, manage and operate the properties and business of said Wilson & Co. (Inc.); that on August 27, 1924, certain creditors of said Wilson & Co. (Inc.) filed a petition in bankruptcy against it in said District Court of the United States for the Southern District of New York and that thereafter said Wilson & Co. (Inc.) was adjudicated a bankrupt in said proceeding.

That thereafter said bankruptcy proceeding against Wilson & Co. (Inc.) was dismissed and all the properties and [fol. 1036] assets and the business of said Wilson & Co. (Inc.), a primary defendant herein, were sold and transferred by said receivers of Wilson & Co. (Inc.) pursuant to decrees of sale entered in said receivership proceedings and said properties, assets and business of Wilson & Co. (Inc.), a primary defendant herein, were acquired by a new corporation organized under the laws of the State of Delaware under the name of Wilson & Co. (Inc.), and since such acquisition have been and now are owned and operated by said new corporation.

[fol. 1037] It is further stipulated that the following named persons, residing at the cities indicated, and being officers of the organizations and/or associations named, are producers of live stock, including cattle, hogs, sheep and lambs, in the States indicated by their residences and organizations; that the said persons are available to the petitioning defendants, Swift and Armour, as witnesses, and that they would, if called to the witness stand and sworn, testify in substance that there is keen and active competition in the buying of their live stock; that they, and the members of their respective organizations, are treated fairly, and are not subjected to unfair trade practices, in connection with the selling by them and the buying by representatives of the defendant packers, and other packers and buyers, of their live stock; that they sell their

stock, under competitive conditions, in the live stock market yards in the various sections of the country, and directly to packers at their private yards and to buyers engaged in direct marketing near places of production; that based upon their experience in the live stock industry each of said witnesses is of opinion that there is not and cannot be a monopoly of said industry; that based upon their experience in said industry each of them is of opinion that live stock could be marketed more profitably to the producer if the large meat packing companies engaged in marketing at retail as well as at wholesale; that based upon the same experience each of said persons is of opinion that his industry would be benefited if the large meat packing companies were permitted to sell foodstuffs other than, and in addition to, meat food products, to the end that the cost of distributing meats and other live stock products might be shared by non-meat foodstuffs handled and distributed by the same persons, firms and corporations who engaged in the handling, distributing and selling of meats; that each of said persons, and the members of their respective organizations, receives prompt and reliable information respecting market conditions, receipts, trading and prices of live stock of the character dealt in by them, and that this enables them to select their own markets and times to make shipments, to the best advantage to themselves, to the extent that such selection is practicable in the live stock industry. Said witnesses are:

[fol. 1038] J. Elmer Brock, Pres., Wyoming Stockgrowers' Association, Buffalo, Wyoming;
R. W. Brown, Missouri Farm Bureau Federation;
Dan D. Casement, Manhattan, Kansas;
Kenneth Chalmers, Colorado Wool Growers' Ass'n;
James Cook, Northwestern Co-op. L. S. Shippers' Association, Clearwater, Minn.;
J. M. Coyner, Secretary, Wisconsin Livestock & Meat Improvement Council, Chairman, Committee of National Swine Growers' Association on Register of Performance for Swine, Madison, Wisconsin;
E. L. Dana, Parkman, Wyoming;
B. F. Davis, Colorado Stockgrowers Association, Pres., Colorado Farm Bureau, Past Sec'y, Wyoming Stockgrowers, Denver, Colorado;
Dr. George M. Babcock, Rock Island, Illinois;

A. E. De Ricqles, Denver, Colorado;
T. J. Drumheller, Washington Wool Growers' Association;
W. I. Drummond, American Farm Congress, Kansas City, Mo.;
Earl Elijah, Eastern Iowa L. S. Marketing Association;
Knute Espe, Iowa Cooperative Live Stock Shippers Association;
H. W. Farr, Pres., Nebraska-Colorado Lamb Feeders Association, Greeley, Colo.;
Dr. I. L. Gotthelf, Pres., Saguache Lamb Feeders' Association, Saguache, Colo.;
Robert Graham, Pres., Nebraska Stockgrowers' Association, Alliance, Neb.;
[fol. 1039] Mac Hall, Denver, Colorado;
F. W. Harding, General Executive, American Shorthorn Breeders Association, Chicago, Ill.;
Mr. Harris, Coop. Auction Yards, Kentucky;
Dan Hildebrand, Nebraska Improved Live Stock Breeders' Association, and Nebraska Cattle Feeders' Association;
Harry Hopley, Pres., Interstate Organization of Meat Producers, Atlantic, Iowa;
Professor E. H. Hostetler, North Carolina Agricultural College, Secretary, Southern Livestock Association, Raleigh, N. C.;
J. W. Hudelson, Pomona, Kansas;
A. A. Johns (Senator), Arizona Wool Growers' Association, Prescott, Ariz.;
Ben Kemper, Denver, Colorado;
R. M. Kleberg, Corpus Christi, Texas;
R. P. Lamont, Jr., Pres., American Hereford Breeders Ass'n, Pres., Western Packing Company at Denver, Larkspur, Colo.;
Fred F. McArthur, Oakland, Iowa;
S. W. McClure, Idaho Wool Growers' Association;
Ray McElrath, Moville, Iowa;
Arden McKee, Pres., National Swine Growers' Association, Preston, Iowa;
Sol Mayer, Member, Sheep & Goat Raisers' Association, San Angelo, Texas;
Jewell Mayes, Sec'y Missouri State Board of Agriculture, Jefferson City, Mo.;

[fol. 1040] A. R. Mitchell, Former President, American Hereford Cattle Breeders' Association, Member, New Mexico Stockgrowers, Albert, N. M.;
P. C. Murphy Co-op. Wool Growers Association of South Dakota;
Floyd Nichols, Capper Press, Topeka, Kansas;
E. A. O'Neil, President, Alabama Farm Bureau Federation;
L. B. Palmer, Ohio Farm Bureau Federation;
E. A. Phillips, Secretary, Montana Stockgrowers' Association, Helena, Mont.;
F. A. Phillips, Cattle & Horse Raisers Ass'n of Oregon;
E. C. Rector, Ohio Livestock Co-op. Association, Circleville, O.;
Roscoe Rich, Idaho Wool Growers' Association;
James R. Riggs, Sullivan, Indiana;
C. C. Roberts, Marion, O.;
Colonel George Grant Seaman, Taylorville, Ill.
J. B. Wilson, National Wool Growers' Association, Wyoming Wool Growers' Association, McKinley, Wyo.;
W. H. Settle, Indiana Farm Bureau Federation;
J. Blaine Shaum, Tarkio, Mo.;
Harry Snyder, Billings, Mont.;
E. B. Spiller, Sec'y, Texas & Southwestern Cattle Raisers Association, Fort Worth, Texas;
Sam G. Thompson, Center Junction, Iowa;
[fol. 1041] Dan Wallace, Editor, The Farmer, St. Paul, Minn.;
Senator Nate C. Warren, Member, Nebraska-Colorado Lamb Feeders Ass'n, Fort Collins, Colo.;
C. R. White, American Farm Bureau Federation;
J. D. Yaeger, Nevada State Farm Bureau Federation;
James West, V. P., Texas & Southwestern Cattle Raisers Association, Houston, Texas;
Hubbard Russell, Former president, California Cattlemen's Association, Former president, Western Marketing Association, Los Angeles, Calif.;
Senator C. H. Williams, President, Montana Wool Growers Association, Deer Lodge, Mont.;
Charles D. Carey, Chairman, National Live Stock and Meat Board, Cheyenne, Wyo.;
Senator Frank O. Horton, Former vice-president, Wyoming Stock Growers Association, Buffalo, Wyo.;

Charles Belden, Director, American National Live Stock Association, Pitchfork, Wyo.;

Field S. Bohart, Former president, Colorado Stock Growers Association, Director, American National Live Stock Association, Colorado Springs, Colo.;

J. H. Nason, V. P., Western South Dakota Stock Growers Association, Spearfish, S. D.;

E. Ray Cowden, V. P., Arizona Stock Growers Association, Director, American National Live Stock Association, Phoenix, Ariz.;

Harry Saxon, Former president, Arizona Stock Growers Association, Director, American National Live Stock Association, Wilcox, Ariz.;

Wayne Thornburg, Former vice-president, Arizona Stock Growers Association, Director, American National Live Stock Association, Phoenix, Ariz.;

[fol. 1042] P. S. Dorris, Former president, California Cattlemen's Association and of Western Marketing Association, Alturas, Calif.;

Ezra Baer, Director, American National Live Stock Association, Meeker, Colo.;

W. S. Whinnery, Former president, Colorado Stock Growers Association, Director, American National Live Stock Association, Lake City, Colo.;

W. J. Miller, Former president, Kansas Live Stock Association, Topeka, Kans.;

W. H. Donald, V. P., Montana Stock Growers Association, Melville, Mont.;

J. A. Donovan, Director of Montana Stock Growers Association and American National Live Stock Association, Butte, Mont.;

J. Terrett, V. P., Montana Stock Growers Association, Brandenburg, Mont.;

Dan Adamson, Former president, Nebraska Stock Growers Association, Director, American National Live Stock Association, Cody, Neb.;

George Christopher, Director, Nebraska Stock Growers Association, Valentine, Neb.;

A. R. Modisett, Director, Nebraska Stock Growers Association, Director, American National Live Stock Association, Rushville, Neb.;

Vernon Metcalf, Secretary, Nevada Land & Live Stock Association, Reno, Nevada;

E. B. Mitchell, President, Highland Hereford Association, Marfa, Texas;

T. B. Masterson, Director of Texas & Southwestern Cattle Raisers Association and of American National Live Stock Association, Truscott, Texas;

R. M. Faddis, Director, Wyoming Stock Growers Association, Director, American National Live Stock Association, Sheridan, Wyo.;

[fol. 1043] Caesar Kleberg, Assistant manager, King Ranch, Director, Texas & Southwestern Cattle Raisers Association, Kingsville, Texas;

Ed Springer, Director, New Mexico Stock Growers Association, Director, American National Live Stock Association, Springer, N. M.

[fol. 1044] As to public markets, it is further stipulated that producers of live stock and sellers of meat and meat products and other food products in the United States are now enabled to receive prompt, full, accurate, and unbiased reports of the demand for live stock, the prices prevailing, the character and kind of stock required, the receipts at and condition of the markets in which stock is sold and the markets in which meat and other food products are sold, together with information respecting trade and maket conditions. There does not exist control by the defendants or any of them of the media or channel through which this information is furnished, or any peculiar and exclusive access to information concerning the receipts and sale of live stock, its disposition, the dissemination of information to the producer, or the sales and market conditions relating to meats and other finished products of live stock, or other foods. It is agreed that the character of market news service, its unbiased sources and impartial dissemination, is as heretofore given in evidence on this hearing by witnesses who have testified on those subjects.

[fol. 1045] It is further stipulated as follows:

That as to American Stores Corporation, in addition to data contained in Petitioners' Exhibit No. 69, the following are facts relating to that company's business: It owns and operates a plant at Hurlock, Maryland, for the canning of vegetables and fruits; a plant at Neillsville, Wisconsin, for evaporating milk; 8 bakeries in which are baked bread and other bakery products for sale to its retail stores, and 8

wholesale warehouses; the company deals in teas, coffees, fresh and cured meats, fresh and canned fruits and vegetables, and all kinds of groceries. The company added meats to its grocery business in 1924.

That as to First National Stores, Inc., in addition to facts relating to this company contained in Petitioners' Exhibits 51, 52, 53 and 69, it is agreed that the following are facts: This company as of the year 1929 had 7 warehouses, 4 bakeries, 1 candy factory, 1 coffee-roasting plant, 1 print shop, 2 central plants with manufacturing operations.

As to Safeway Stores, Inc., in addition to the facts relating to this company contained in Petitioners' Exhibit No. 69, these are facts: This company consists of a parent company and seventeen subsidiary corporations; its facilities as of 1930 include 15 bakeries, 44 warehouses, 3 creameries, 1 candy factory, 50 iceless refrigerator cars. It deals in groceries, fruits, vegetables, canned and fresh, meats, fish, breads and bakery supplies, milk, and a general line of food products.

That as to National Tea Company, in addition to the facts relating to this company set forth in Petitioners' Exhibit No. 69, facts relating to this company are: That it consists of a parent company and fifteen subsidiary corporations. It has a baking plant and a general plant and warehouses; of its stores, in 185 meats are sold; the company handles in addition to a general grocery line, fresh vegetables and fruits, butter, eggs, poultry, fish, bakery and other food products.

That as to the MacMarr Stores, in addition to the facts relating to this company contained in Petitioners' Exhibit No. 69, and in evidence heretofore received regarding this company's business, the following are facts: This com- [fol. 1046] pany consists of a parent corporation and twenty-seven subsidiary corporations; as of 1930 this company owned and operated 5 bakeries, 2 creameries, 6 wholesale grocery houses, 1 coffee and spice plant, 1 printing plant, 23 distributing warehouses; the company, through its stores and stands, sells groceries of all kinds, fresh fruits and vegetables, fresh and cured meats, fish, butter, eggs, cheese and poultry, milk, bakery products, teas, coffees, and other beverages. In addition to its stores the company operates 108 separate vegetable stands, 22 delicatessans, and 2 drug departments.

That as to the Pender Grocery Company, in addition to the facts relating to this company contained in Petitioners' Exhibit No. 69, this company, with headquarters at Norfolk, Va., and Southern Grocery Stores, Inc., with headquarters at Atlanta, Ga., have been combined under the control of National Food Products Corporation; these combined chains had at the end of 1929, 818 retail stores in which there were 246 meat market departments; combined they have 4 warehouses, 2 bakeries, 1 restaurant, in addition to their stores. Southern Grocery Stores, Inc., in 1920 owned 119 retail stores, and in that year its gross sales amounted to $6,759,571; in 1929 this company operated 408 retail stores and its gross sales amounted to $16,092,468; the combined 1929 sales of Pender Grocery Company and Southern Grocery Company, both now controlled by National Food Products Corporation, for the year 1929 amounted to $32,000,000; in the stores of these combined companies a general line of groceries, fresh fruits and vegetables, milk, butter, eggs, cheese, poultry, teas, coffees, and other beverages, and meats, fresh and cured are sold.

That Economy Grocery Stores is a corporation with headquarters at Boston, Mass., whose predecessor company in 1920 had 50 stores and which company in 1929 had 368; that its first reported sales for the year 1922 amounted to $2,393,033, and its sales in 1929 amounted to $10,561,097; that prior to 1925 it did not operate any meat markets in its stores; that in 1929 it had 82 meat departments in its stores; that among its facilities are 1 warehouse, and 1 refrigerating plant for meats and produce; that its invested capital, or net worth, in 1925 was $866,247, and its net earnings for that year were $203,272; that its invested capital, or net worth, for the year 1929 was $1,134,510, its [fol. 1047] net earnings for that year being $271,551; that its earnings on sales for the year 1929 amounted to 2.57% and its earnings on its invested capital for that year amounted to 24%; that this company does a general grocery and meat market business.

That the United States Stores Corporation was organized in 1922 and has its headquarters in New York, N. Y.; that it is a holding company owing all the capital stock of six subsidiaries; that the company has 881 grocery and meat stores located in twelve states; 4 warehouses and 2 bakeries; it does a general grocery and meat business.

That Daniels Reeves, Inc., in addition to the facts relating to this company contained in Petitioners' Exhibit No. 69, the facts are that its predecessor company owned and operated 202 stores in 1920, and that its total sales for the year 1920 amounted to $16,029,677; in 1925 its predecessor company had 518 stores, with total sales of $23,434,854; that this company operates grocery stores which do not handle fresh meats.

That in 1920 there were in the United States approximately 15,000 retail chain grocery stores, and that of this number approximately 1,200 contained fresh meat market departments; that in 1929 there were in the United States approximately 60,000 grocery chain stores in the United States, of which approximately 15,800 contained fresh meat market departments; that the estimated total annual sales of grocery chain stores in the United States in 1920 was $770,000,000, and in 1929 $3,500,000,000; that there are approximately 900 separate corporations in the United States, as of 1929, owing and operating the above-mentioned retail stores; and of the total number of grocery chain store companies, the seventy largest, with the names of the companies, the address of their principal headquarters, the total number of stores operated by each, and the total number of meat markets operated by such of them as have meat markets, are as shown in the following list.

[fol. 1048]

Number of Stores Operated by the Seventy Largest Grocery Chains in 1929

Name	Address	Stores	Markets
Great Atlantic & Pacific Tea Co.	New York, N. Y.	15,418	3,851
Kroger Gro. & Baking Co.	Cincinnati, Ohio	5,575	3,191
Safeway Stores, Inc.	Los Angeles, Cal.	2,660	1,366
American Stores	Philadelphia, Pa.	2,645	654
First National Stores, Inc.	Somerville, Mass.	2,575	192
National Tea Co.	Chicago, Ill.	1,604	185
Piggly Wiggly	Various Addresses	1,422*	471*
MacMarr Stores	Portland, Oregon	1,394	345
James Butler, Inc.	Long Island City, N. Y.	1,047	30
U. S. Stores Corp.	Pittsburgh, Pa.	945	56
National Groc. Co.	Jersey City, N. J.	805	.....
Thos. Roulston, Inc.	Brooklyn, N. Y.	702	.....
Daniel Reeves, Inc.	New York, N. Y.	698	.....
Grand Union Co.	New York, N. Y.	576	115
C. F. Smith Co.	Detoit, Mich.	525	.....
H. C. Bohack Co.	Brooklyn, N. Y.	504	230
D. Pender Gro. Co.	Norfolk, Va.	410	58
Southern Gro. Stores, Inc.	Atlanta, Ga.	404	186
Mutual Grocery Co.	Newark, N. J.	404	117
Flickinger	Buffalo, N. Y.	400	8
Clarence Saunders Stores	Memphis, Tenn.	400	175

Name	Address	Stores	Markets
Economy Gro. Stores	Boston, Mass.	364	82
National Dairy Prod. Company	(Sheffield Farms Co.). New York, N. Y.	350	.....
Eagle Gro. Co.	Jersey City, N. J.	346	.....
The Fisher Bros. Co.	Cleveland, Ohio	316	52
Jewel Tea Co.	Barrington, Ill.	287**	.....
The Market Basket	Geneva, N. Y.	277	25
R. Chain Stores	Detroit, Mich.	270	134
Hill Grocery Co.	Birmingham, Ala.	269	105
Standard Groc. Co.	Indianapolis, Ind.	253	68
Almar Stores	Philadelphia, Pa.	249	134
H. G. Hill Co.	Chattanooga, Tenn.	240	40
Keystone Gro. Tea Co.	Pittsburgh, Pa.	199	.....
Red Owl Stores, Inc.	Minneapolis, Minnesota	191	25
A. H. Phillips, Inc.	Springfield, Mass.	187	.....
Continental Chain Stores	Los Angeles, Calif.	180	30
Larkin Stores	Buffalo, N. Y.	178	.....
Crook Stores Co.	Baltimore, Md.	161	81
Danahy Faxon Stores, Inc.	Buffalo, N. Y.	160	100
Schaffer Stores Co., Inc.	Schenectady, N. Y.	150	45
The Public Food Stores	San Francisco, Cal.	148	14
Gristede Bros.	New York, N. Y.	147	.....
The Logan Bros. Co.	Bridgeport, Conn.	144	.....
E. E. Gray Co.	Boston, Mass.	135	23
Harts Self Serving Gro. Stores	Rochester, N. Y.	135	16
Great Eastern Stores Co.	Paterson, N. J.	127	.....
Victory Chain, Inc.	Norwich, N. Y.	125	3
The Fred W. Albreacht Co.	Akron, Ohio	123	51
[fol. 1049]			
Loblaw Grocerterias, Inc.	Buffalo, N. Y. and Chicago, Ill.	119	.....
H. G. Hill Stores, Inc.	New Orleans, La.	110	31
Weiss Pure Food Stores	Sunbury, Pa.	107	12
Council Oak Stores	Sioux City, Ia.	105	36
C. D. Kenney Co.	Baltimore, Md.	100	.....
Community Stores Co.	Worcester, Mass.	98	15
Winn & Lovett Gro. Co.	Jacksonville, Fla.	96	58
N. Winer & Co.	Boston, Mass.	91	.....
The Fair Stores Corp.	Little Rock, Ark.	86	.....
Better Service Stores, Inc.	Stamford, Conn.	85	85
L. Oppenheimer	New York, N. Y.	85	85
Oakley Economy Stores	Terre Haute, Ind.	83	48
The Shaffer Stores Co., Inc.	Altoona, Pa.	81	60
Youngstown Handy Service Stores	Youngstown, O.	80	.....
Handy Andy, Inc.	New York, N. Y.	80	36
Standard Dairy Stores	New York, N. Y.	78	.....
Busy Bee Stores	New York, N. Y.	75	.....
Union Supply Co.	Pittsburgh, Pa.	68	.....
Frye & Co.	Seattle, Wash.	64	64
Frank McDonald	Knoxville, Tenn.	63	.....
H. P. Hood & Sons Co.	Boston, Mass.	61	.....
South Georgia Gro. Co.	Quitman, Ga.	60	3
Total		48,699	12,791

*Only those not part of chains listed otherwise.

**On basis of 1929 sales of $16,844,110 divided by $58,808, equal to ordinary sales per store in chains.

[fol. 1050] That in addition to the chain grocery stores, with and without meat markets, referred to hereinbefore

(not, however, including so-called voluntary chain stores), in the year 1929, it is estimated that there were in operation in the United States 3632 meat chain stores, the principal business of which was the retailing of fresh and cured meats, in most of which stores there were also sold non-meat foodstuffs; 1017 chain bakery shops; 2075 chain restaurants and cafeterias and 523 chain hotels; that said chain meat stores, bakeries, restaurants, cafeterias and hotels had the chain characteristic of centralized purchasing.

That the facts and figures hereinbefore contained in this stipulation do not include chain store organizations operating drug, cigar, clothing, and shoe retail chain stores, but only include chain organizations dealing in food stuffs. It is stipulated however that the fact is that many chain retail drugstores handle and sell foodstuffs.

It is further stipulated that in addition to the facts regarding companies named in petitioners' Exhibit No. 70, set forth in that exhibit, the following are facts:

Drug, Inc., is a corporation organized March 2, 1928, succeeding to a predecessor company known as the United Drug Company; this Company, in 1920, operated 250 drugstores in the United States, and a number of drugstores in foreign countries. In 1929 the Company operated 520 stores in the United States, a larger number in foreign countries, and was affiliated with 10,000 additional drugstores in the United States operated by stockholder agents and known as the Rexall Stores.

Since the incorporation of Drug, Inc., in 1928, and the acquisition by it of the stock of the United Drug Company and Sterling Products, Inc., Drug, Inc., has acquired the following corporations during the years indicated:

1928—B. & R. Drugstores Co., Chicago;
1929—May Drugstores Corporation, Pittsburgh;
Life Savers, Inc.;
Wolff-Wilson Drug Co.;
Three-in-One Oil Co.;
Bristol-Myers Co.;
1930—Owl Drug Co., which operates a chain of 106 drugstores in western United States.

Drug, Inc., and its subsidiaries are engaged in the manu-[fol. 1051] facture and distribution of medicines, toilet articles, rubber goods, stationery, candies and other food products, druggists' sundries and similar goods. One of the subsidiaries of Drug, Inc., is the Ballardvale Pure Food Company, the charter of which permits it to engage in the manufacture and distribution of food products of every description. Another subsidiary is Schuhle's Pure Grape Juice Company, with plant located at Highland, N. Y., with an annual capacity of 325,000 cases of grape juice.

According to Standard Statistics Company, a financial reference service organization, Drug, Inc., estimates that 80 per cent of its net profits are from its manufacturing activities while 20 per cent are from its retail business. It considers its retail sales activites merely a necessary adjunct to the basic operation of the manufacture and distribution of its products. "Just as automobile tire manufacturers and crude oil refineries now market their products through their own service stations", so does Drug, Inc., market its articles through an extensive chain of its own drugstores.

Comparative statistics relating to Drug, Inc., for the years 1920 and 1929 are as follows:

	1920	Index	1929	Index
Net Income	3,797,997	100	17,013,543	448
Total Assets	82,076,826	100	158,031,737	193
Net Worth	51,304,288	100	94,310,192	184

It is further stipulated, in addition to facts shown in petitioners' Exhibit No. 70 relating to the companies named in that exhibit, that Schulte Retail Stores Corporation is a corporation which in 1920 owned and operated 157 retail stores in the United States and in 1928 owned and operated 312 stores; that from 1920 to 1923 this Company confined its activities to manufacturing cigars, pipes and tobacco, and operating a chain of stores through which it sold these articles; that in August, 1923, this Company acquired control of Park & Tilford, New York, and since has operated, in addition to cigar and tobacco stores, in the retail and wholesale grocery, perfume, candy and luncheonette business.

In 1927 Schulte Retail Stores Corporation acquired control of Huyler's of Delaware, Inc., a confectionery and [fol. 1052] luncheonette business with 51 retail stores.

In 1929 Schulte formed a new company called Huyler's Luncheonettes, Inc., to operate stores carrying smokers' articles, cards and novelties, ice cream, sandwiches, etc.

Comparative statistics for Schulte Retail Stores Corporation for the years 1921 and 1928 are as follows:

	1921	Index	1928	Index*
Sales	20,699,159	100	37,420,231	181
Net Income	1,017,712	100	4,360,322	429
Total Assets	7,749,864	100	34,027,407	439
Net Worth	5,170,757	100	29,593,501	572

*Index numbers with 1921 as the base year.

It is further stipulated that the averments of paragraphs 7, 8 and 10 of Chapter I of the amended petition of the defendants Swift & Company and others for modification of the decree of February 27, 1920, in this case, relating to the businesses referred to in said paragraphs, are in substantial accord with the facts relating thereto, and that the said averments may be considered by the Court with the same effect as if proved in substance by witnesses testifying to the facts so averred.

It is further stipulated that R. Bruce Brownlee, if called as a witness in this case, would testify that he is manager of the Research Department of the Standard Statistics Company of New York City; that said Company is engaged in the collecting and publishing of statistics relating to industries in the United States, and in furnishing a statistical service to banks, and commercial, industrial, railroad and public utility corporations, relating to the capital structure, earnings and business of corporations of all classes; that the compilations of said Standard Statistics Company are generally used and have become standard works of reference in the United States; that the said Standard Statistics Company has prepared, at the request of the petitioning defendants, four tables which, together with general explanation relating to said tables, are as follows, and that the same may be considered in evidence as though produced by said Brownlee as a witness and offered and received after having been testified to by him:

[fol. 1053] General Explanation

The four tabulations herein contained represent a carefully compiled record of all corporations for which reports of income for the years 1920 and 1929 are available.

These reports have been taken from Standard Corporation Records published by Standard Statistics Company of New York and are believed to be a complete list of domestic (U. S.) corporations.

In the group of food companies selection was made on the following basis:

Included All Domestic (U. S.) companies engaged in the manufacture or distribution of food or food products including those manufacturing vegetable oils and retail grocery and Food Stores.

Excluded Tobacco Mfrs., Distilleries, Stock Yards, Food Storage, Hotels, 5 and 10 cent Stores, Mail Order Houses, Restaurants, Soap companies.

In the group of all domestic (U. S.) companies with reported net income of $2,000,000 or over selection was made on the following basis:

Included All companies incorporated in the U. S. or its possessions and the Cuban Sugar Companies.

Excluded Investment Trusts, and all industrial companies holding the securities of other corporations.

The arrangement of these tables are as follows:

Food and Food Products Companies

Table I. All corporations engaged in the food or food products industry, including those producing vegetable oils but excluding those engaged in the manufacture of Tobacco, Distilleries, Stock Yards or Food Storage. Arranged in order of highest net income for 1929 to lowest for 1929.

Table II. Similar data for 1920 arranged in order of highest net income for 1920 to the lowest net income (or greatest deficit net income) for 1920. The same inclusions and exclusions have been made in compiling this list of food companies as in the above table.

[fol. 1054] All Industrial Companies

Table III. This list comprises all domestic (U. S.) concerns including the food companies, but excluding holding companies where the reported figures for such companies are not truly indicative of the operation of the companies held, and excluding also Investment Trusts. Arranged in order of highest net income for 1929 to lowest for 1929.

Table IV. Similar data for 1920. Arranged in order of highest net income for 1920 to lowest net income (or greatest deficit net income) for 1920. Compiled in the same manner as Table III.

Only such qualifying notes as were considered necessary to correct interpretation of these figures have been made.

For the source of these published reports, where Standard Statistics Company Corporation Records have been taken the symbol SCR has been designated; for Moody's Manuals "Moody's" is noted, and for Poor's Manual "Poor's" is noted.

September the Twenty-fourth, 1930.

[fol. 1055] Table I (immediately following) is a compilation of all companies engaged in the food or food products industry during the year 1929.

The 241 companies are arrayed (in Table I) in order from the highest net income to the lowest.

Totals—Table I

Number of companies	Year	Sales	Net Income
241	(1929)	.....	$445,061,209
134	(1929)	$6,210,756,048	235,023,495

[fol. 1056]

TABLE I

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
1	Great Atlantic & Pacific Tea Co.	$24,219,631	N. R.	2-28-30	SCR
2	National Dairy Products	24,919,934	$390,600,052	12-31-29	SCR
3	Procter and Gamble Company	22,210,318	192,352,590	6-30-30	SCR
4	National Biscuit Company	21,422,357	N. R.	12-31-29	SCR
5	General Foods Corporation	20,519,047	128,036,791	12-31-29	SCR
6	Borden Company (The)	20,403,725	328,466,989	12-31-29	SCR
7	Standard Brands	18,844,391	N. R.	12-31-29	SCR
8	United Fruit Company	17,802,992	N. R.	12-31-29	SCR
9	Corn Products Refining Company	15,647,687	N. R.	12-31-29	SCR
10	Swift and Company	13,076,815	1,000,000,000*	11- 2-29	SCR
11	Coca-Cola Company	12,758,276	39,260,813	12-31-29	SCR
12	Wrigley (Wm.) Jr., Company	11,608,708	N. R.	12-31-29	SCR
13	Armour and Company (Ill.)	9,810,518	900,000,000*	11- 2-29	SCR
14	Quaker Oats Company	8,735,205	N. R.	12-31-29	SCR
15	Gold Dust Corporation	7,586,963	N. R.	12-31-29	SCR
16	Hershey Chocolate Corporation	7,435,779	41,371,913	12-31-29	SCR
17	General Baking Company	7,239,221	N. R.	12-28-29	SCR
18	American Sugar Refining Company	6,928,794	N. R.	12-31-29	SCR
19	Continental Baking Corporation	6,671,101	N. R.	12-31-29	SCR
20	American Stores Company	6,594,822	143,346,157	12-31-29	SCR
21	Safeway Stores, Inc.	6,147,313	213,496,254	12-31-29	SCR
22	California Packing Corporation	6,024,349	N. R.	2-28-30	SCR

23	Kroger Grocery & Baking Company	5,919,096	286,611,214	12-31-29	SCR
**24	Nestle & Anglo-Swiss Cond. Milk Co	5,838,024	N. R.	12-31-29	SCR
25	Great Western Sugar Company	5,810,267	N. R.	2-28-30	SCR
26	Purity Bakeries Corporation	5,652,285	48,219,021	12-28-29	SCR
27	First National Stores, Inc	4,736,057	107,635,216	3-29-30	SCR
28	General Mills, Inc	4,609,101	163,071,661	5-31-30	SCR
29	Kraft-Phenix Cheese Company	3,514,840	86,393,675	12-31-29	SCR
30	Morrell (John) & Co., Inc	3,435,799	94,660,595	a11- 2-29	SCR
31	Hawaiian Pineapple Company, Ltd	3,166,308	15,201,487	12-31-29	SCR
32	Ward Baking Corporation	3,124,400	N. R.	12-28-29	SCR
33	National Sugar Refng. Co. of N. J	2,954,744	N. R.	12-31-29	SCR
34	Canada Dry Ginger Ale, Inc	2,835,293	10,624,629	12-31-29	SCR
35	Libby, McNeill & Libby	2,822,532	N. R.	3- 1-30	SCR
36	Pillsbury Flour Mills, Inc	2,814,564	N. R.	6-30-29	SCR
37	National Tea Company	2,731,267	90,210,077	12-31-29	SCR
38	Loose-Wiles Biscuit Company	2,714,865	N. R.	12-31-29	SCR
39	Beech-Nut Packing Company	2,693,749	23,732,089	12-31-29	SCR
40	Wesson Oil & Snowdrift Company	2,547,137	N. R.	8-31-29	SCR
41	Cudahy Packing Company (The)	2,512,850	267,960,185	11- 2-29	SCR
42	Beatrice Creamery Company	2,489,353	83,681,636	2-28-30	SCR
43	Wilson & Company, Inc	2,304,592	310,000,000	11- 2-29	SCR
44	South Porto Rico Sugar Company	2,278,966	15,234,506	9-30-29	SCR
45	United Biscuit Company of America	2,254,098	b9,347,834	12-31-29	SCR
46	Hormel (Geo. A.) & Company	2,217,397	40,047,231	10-26-29	SCR
47	MacMarr Stores, Inc	2,173,523	83,972,105	12-31-29	SCR
48	American Chicle Company	2,107,597	N. R.	12-31-29	SCR
49	Staley (A. E.) Mfg. Company	2,104,930	N. R.	12-31-29	SCR
50	United States Dairy Products Corp	1,950,299	24,713,016	12-31-29	SCR
[fol. 1057]					
51	Penick & Ford	1,882,441	N. R.	12-31-29	SCR
52	Cream of Wheat Corp	1,882,122	N. R.	12-31-29	SCR
53	Jewel Tea Co., Inc	1,691,302	16,844,110	12-28-29	SCR
54	International Milling Co	1,564,719	N. R.	8-31-29	SCR
55	American Maize-Products Co	1,548,440	N. R.	12-31-29	SCR

*—Approximate. a—13 months ended 11/2/29. b—Gross revenue. N. R.—Not reported.
SCR—Standard Corporation Records. **—Omitted from total.

TABLE I—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
56	Archer-Daniels-Midland Co	1,453,408	N. R.	8-31-29	SCR
57	Waialua Agric. Co., Ltd	1,407,885	b3,950,618	12-31-29	SCR
58	Kellogg (Spencer) & Sons, Inc	1,297,730	N. R.	9-28-29	SCR
59	Mead Johnson & Company	1,278,473	N. R.	12-31-29	SCR
60	White Rock Mineral Springs Co	1,229,872	3,504,272	12-31-29	SCR
61	Cuba Company (The)	1,219,898	b26,721,053	6-30-29	SCR
62	Cuban American Sugar Co	1,204,356	b27,985,688	12-31-29	SCR
63	California & Hawaiian Sugar Ref. Corp	1,141,962	N. R.	11-30-29	SCR
64	Godchaux Sugars, Inc	1,132,148	N. R.	1-31-30	SCR
65	Reeves (Daniel), Inc	1,128,350	33,766,924	12-31-29	SCR
66	Western Dairy Products Co	1,104,965	26,047,401	12-31-29	SCR
67	Pacific American Fisheries	1,086,578	N. R.	12-31-29	SCR
68	Fairmont Creamery Co. (Del.)	1,079,287	47,746,917	12-31-29	SCR
69	Golden State Milk Products Co	1,062,313	34,349,414	2-28-30	SCR
70	National Candy Company	1,057,433	N. R.	12-31-29	SCR
71	American Fruit Growers, Inc	1,028,018	47,883,569	12-31-29	SCR
72	Grand Union Company	1,021,385	36,943,112	12-28-29	SCR
73	Western Maryland Dairy Corp	973,118	1,233,894	12-31-29	SCR
74	Ewa Plantation Company	933,386	N. R.	12-31-29	SCR
75	Earl Fruit Co	915,091	N. R.	12-31-29	SCR
76	Bohack (H. C.) Co., Inc	900,337	28,865,869	2- 1-30	SCR
77	Interstate Bakeries Corp	836,252	13,916,797	12-31-29	SCR
78	Calamba Sugar Estate	832,599	2,271,429	9-30-29	SCR
79	Seeman Bros., Inc	816,769	3,650,930	6-30-29	SCR
80	Clark (D. L.) Company	c796,070	4,700,244	12-31-29	SCR
81	Alaska Packers Association	749,146	N. R.	12-31-29	SCR
82	International Products Corp	724,681	N. R.	12-31-29	SCR
83	International Salt Co	687,767	N. R.	12-31-29	SCR
84	Pet Milk Company	660,936	26,896,786	12-31-29	SCR
85	Gerrard (S. A.) Co	653,267	N. R.	11-30-29	SCR
86	Nehi Corporation	647,672	3,714,210	12-31-29	SCR

87	Hires (Chas. E.) Company, The	619,820	4,083,726	9-30-29	SCR
88	Globe Grain & Milling Co	618,585	N. R.	6-30-29	SCR
89	Hawaiian Sugar Company	611,747	N. R.	12-31-29	SCR
90	American Beverage Corp	564,256	3,095,110	e11-30-29	SCR
91	Savannah Sugar Refining Corp	556,410	N. R.	12-31-29	SCR
92	American Bakeries Corp	553,866	7,861,993	12-31-29	SCR
93	United Milk Products Corp	526,555	N. R.	12-31-29	SCR
94	Brach (E. J.) & Sons	524,408	6,543,298	12-31-29	SCR
95	Pacific Coast Biscuit Co	522,676	N. R.	12-31-29	SCR
96	Pie Bakeries of America, Inc	502,483	N. R.	12-28-29	SCR
97	Langendorf United Bakeries, Inc	501,875	5,271,112	6-30-29	SCR
98	Bunte Bros	500,694	6,924,202	12-31-29	SCR
99	Rath Packing Co	495,005	33,932,253	11- 2-29	SCR
100	San Carlos Milling Co., Ltd	490,486	953,245	12-31-29	SCR

[fol. 1058]

101	U. S. Stores Corporation	474,751	28,753,707	12-31-29	SCR
102	Fanny Farmer Candy Shops, Inc	444,120	4,068,258	12-31-29	SCR
103	Welch Grape Juice Company (The)	443,823	N. R.	8-31-29	SCR
104	Onomea Sugar Company	435,528	2,225,455	12-31-29	SCR
105	Commander Milling Company	417,199	N. R.	7-31-29	SCR
106	Hathaway Bakeries, Inc	416,844	7,778,241	12-31-29	SCR
107	Brennan Packing Company	397,921	N. R.	11-30-29	SCR
108	Liberty Baking Corporation	393,963	N. R.	12-30-29	SCR
109	Corno Mills Company	385,348	N. R.	12-31-29	SCR
110	Wheatsworth, Inc	385,146	N. R.	12-31-29	SCR
111	Stahl-Meyer, Inc	381,620	9,418,587	12-28-29	SCR
112	Schulze Baking Company	371,718	N. R.	12-28-29	SCR
113	American Dairies, Inc	368,445	13,524,849	3-31-30	SCR
114	Albers Bros. Milling Company	359,940	N. R.	6-30-29	SCR
115	Commander-Larabee Corporation	359,446	42,646,812	7-31-29	SCR
116	Loudon Packing Company (The)	356,940	N. R.	12-31-29	SCR
117	Western Grocer Company	353,509	N. R.	6-30-30	SCR
118	Consolidated Dairy Products Co	f341,850	1,646,043	12-31-29	SCR
119	Economy Grocery Stores Corp	336,046	13,827,429	6-30-30	SCR

b—Gross Revenue. c—Before Federal Taxes. e—11 Months Ended 11/30/29. N. R.—Not Reported.
SCR—Standard Corporation Records.

TABLE I—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
120	Flour Mills of America, Inc	$326,675	N. R.	5-31-30	SCR
121	American Beet Sugar Company	320,654	N. R.	3-31-30	SCR
122	Hunt Brothers Packing Company	319,974	8,375,678	2-28-30	SCR
123	National Baking Company	316,488	N. R.	6-30-29	SCR
124	Trunz Pork Stores, Inc	315,591	4,976,480	12-31-29	SCR
125	Francisco Sugar Company	311,905	5,457,163	6-30-29	SCR
126	Central Aguirre Association	300,282	5,661,709	7-31-29	SCR
127	Wailuku Sugar Company	295,227	1,605,408	12-31-29	SCR
128	Grocery Store Products, Inc	294,448	N. R.	4-30-30	SCR
129	Huston (Tom) Peanut Company	292,663	2,041,155	8-31-29	SCR
130	Pender (David) Grocery Co	287,715	15,920,689	12-31-29	SCR
131	Central Oklahoma Service Company	f284,463	N. R.	12-31-29	SCR
132	Honolulu Plantation Company	279,299	3,238,809	12-31-29	SCR
133	Gamble-Robinson Company	279,252	18,006,740	12-31-29	SCR
134	Miller & Hart, Inc	266,406	10,507,344	10-31-29	SCR
135	Manati Sugar Company	259,028	N. R.	10-31-29	SCR
136	Orange Crush Company	257,829	1,864,699	12-31-29	SCR
137	Potrero Sugar Company	255,592	2,291,136	10-31-29	SCR
138	American Products Company	249,069	N. R.	9-30-29	SCR
139	Standard Fruit & Steamship Co	248,313	N. R.	12-31-29	SCR
140	Dold (Jacob) Packing Company	248,202	52,909,278	10-31-29	SCR
141	Capital City Products Company	248,139	7,133,290	12-31-29	SCR
142	Minnesota Valley Canning Co	247,442	N. R.	3-13-30	SCR
143	Young (J. S.) Company	244,969	N. R.	12-31-29	SCR
144	Federal Bake Shops, Inc	240,809	4,489,607	12-31-29	SCR
145	Booth (F. E.) Company, Inc	236,868	4,277,129	11-30-29	SCR
146	Booth Fisheries Company	225,925	N. R.	5- 3-30	SCR
147	Manischewitz (B) Company	223,872	N. R.	7-31-29	SCR

148	Edwards (The William) Company	222,640	10,856,255	6-30-30	SCR
149	Eskimo Pie Corporation	220,769	N. R.	12-31-29	SCR
150	Austin, Nichols & Company, Inc	212,302	N. R.	4-30-30	SCR
[fol. 1059]					
151	Crosse & Blackwell, Inc	203,579	N. R.	12-31-29	SCR
152	National Food Products Corp	202,662	N. R.	12-31-29	SCR
153	Nuckolls Packing Company	202,380	N. R.	12-31-29	SCR
154	Kahn's (E.) Sons Company	201,561	$17,801,589	12-31-29	SCR
155	Columbia River Packers Assoc., Inc	200,803	2,897,456	12-31-29	SCR
156	Foremost Dairy Products, Inc	g200,674	4,847,457	3-31-30	SCR
157	Burger Brothers	195,094	N. R.	9-30-29	SCR
158	Holly Sugar Corporation	186,505	N. R.	3-31-29	SCR
159	East Side Packing Company	182,545	21,919,491	12-28-29	SCR
160	Pepeekeo Sugar Company	181,808	984,704	12-31-29	SCR
161	French Bros.—Bauer Co. (The)	c176,113	7,565,729	12-31-29	SCR
162	Muller Bakeries, Inc	168,480	1,910,417	10-31-29	SCR
163	Cespedes Sugar Company	164,629	1,893,853	10-31-29	SCR
164	North American Creameries, Inc	162,449	N. R.	12-31-29	SCR
165	Van De Kamp's Holland Dutch Bak	158,086	2,642,845	12-31-29	SCR
166	Harbaur Co. (The)	157,725	N. R.	6-29-29	SCR
167	Liberty Dairy Products Corp	156,804	4,152,513	4-30-28	SCR
168	National Fruit Product Co	155,628	1,553,349	8-31-29	SCR
169	Fink (A.) & Sons, Inc	c154,246	6,720,997	12-31-29	SCR
170	Louisiana State Rice Milling Co	g151,010	6,366,113	4-30-30	SCR
171	Larabee Flour Mills Company	c150,183	N. R.	6-30-29	SCR
172	Home Dairy Co., Inc	149,374	2,013,755	12-31-29	SCR
173	Mayer (Oscar) & Company, Inc	145,647	N. R.	11-30-29	SCR
174	Winn & Lovett Grocery Company	139,209	6,092,003	12-28-29	SCR
175	Lyons-Magnus, Inc	137,488	N. R.	3-31-30	SCR
176	Gobel (Adolf) Inc	131,298	46,032,417	12-28-29	SCR
177	Knudsen Creamery Company	129,403	2,218,278	3-31-30	SCR
178	Ivanhoe Foods, Inc	126,498	1,077,057	12-31-29	SCR
179	Williams (R. C.) & Co., Inc	125,238	N. R.	4-30-30	SCR
180	Alaska Pacific Salmon Corp	124,937	N. R.	h12-31-29	SCR
181	Chapman's Ice Cream Company	123,650	657,916	12-31-29	SCR

b—Gross Revenue. c—Before Federal Taxes. g—Before depreciation. h—11 months ended December 31, 1929.
SCR—Standard Corporation Records. N. R.—Not Reported. f—Before Depreciation and Federal Taxes.

TABLE I—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
182	Sweets Company of America, Inc	$121,748	$1,245,261	12-31-29	SCR
183	Hutchinson Sugar Plantation Co	118,820	1,084,433	12-31-29	SCR
184	Hershey Creamery Company	117,333	5,355,426	12-31-29	SCR
185	Van Camp Milk Company	116,347	N. R.	12-31-29	SCR
186	Carstens Packing Company	112,532	11,274,145	9-30-29	SCR
187	Chapman Ice Cream Co. of Calif	110,163	657,916	12-31-29	SCR
188	Churngold Corporation (The)	107,569	N. R.	12-31-29	SCR
189	Columbia Baking Company	106,611	N. R.	12-28-29	SCR
190	Atlantic Macaroni Company	104,674	N. R.	12-31-29	SCR
191	Sieloff Packing Company	99,644	N. R.	3-31-30	SCR
192	Francisco Sugar Company	98,043	b4,653,924	6-30-30	SCR
193	Zoller (Wm.) Company	c87,343	5,478,569	12-31-29	SCR
194	Bay State Fishing Company	81,716	5,758,908	4-30-30	SCR
195	Columbus Packing Company	76,299	16,785,461	11- 2-29	SCR
196	Honomu Sugar Company	75,646	b755,520	12-31-29	SCR
197	Carpel Corporation	73,013	N. R.	12-31-29	SCR
198	Snider Packing Corp	70,081	11,050,405	1-31-30	SCR
199	National Licorice Company	68,796	N. R.	12-31-29	SCR
200	Haytian Corporation of America	68,411	b1,850,766	6-30-29	SCR
[fol. 1060]					
201	Rocky Mountain Packing Corp	68,045	1,614,998	12-31-29	SCR
202	Paauhau Sugar Plantation Co	64,807	1,035,142	12-31-29	SCR
203	American Candy Company	64,057	1,250,550	12-31-29	SCR
204	General Candy Corporation	62,883	N. R.	12-31-29	SCR
205	Stewart Curtis Packers, Inc	62,004	N. R.	5-31-29	SCR
206	Sullivan Packing Company	51,449	9,650,839	11- 2-29	SCR
207	Blayney-Murphy Company	48,679	N. R.	11- 2-29	SCR
208	Citizens Wholesale Supply Co	46,170	1,217,617	12-31-29	SCR
209	Cloverland Dairy Products Co	41,482	1,792,419	12-31-29	SCR

210	Clarence Saunders Stores, Inc	41,107	5,933,671	11–3–28	SCR
211	Nunnally Company (The)	40,502	1,775,392	12–31–29	SCR
212	Punta Alegre Sugar Company	40,269	i9,560,579	9–30–29	SCR
213	Schutter-Johnson Candy Company	36,929	N. R.	12–31–28	SCR
214	Horlucks, Inc	32,294	N. R.	12–31–29	SCR
215	Annapolis Dairy Products Co	j31,438	N. R.	10–31–28	SCR
216	Shasta Water Company	30,345	223,550	6–30–29	SCR
217	American Caramel Company	c25,296	1,154,906	12–31–29	SCR
218	Meyer Dairy Corporation	23,156	516,124	12–31–29	SCR
219	Traders Oil Mill Company	19,714	N. R.	6–30–29	SCR
220	Rigney and Company	3,067	N. R.	12–31–29	SCR
221	Cimarrones Fruit Company	d6,096	314,361	12–31–29	SCR
222	Mutual Creamery Company (Utah)	d32,704	N. R.	2–28–30	SCR
223	Pittsburgh Brewing Company	d41,544	2,173,433	10–31–29	SCR
224	New Niquero Sugar Company	d50,396	N. R.	7–31–29	SCR
225	Southern Grocery Stores, Inc	d57,254	16,092,468	12–31–29	SCR
226	Union Sugar Company	d62,659	N. R.	12–31–29	SCR
227	Southern Stores Corporation	d79,102	N. R.	12–31–29	SCR
228	Hammond, Standish & Company	d94,849	12,323,117	11–2–29	SCR
229	Independent Brewing Co. (of Pitts.)	d115,121	N. R.	9–30–29	SCR
230	Crook (J. W.) Stores Company	d122,203	5,989,531	12–31–29	SCR
231	Caracas Sugar Company	d133,317	N. R.	9–30–29	SCR
232	United Grape Products, Inc	d208,987	1,986,433	8–31–29	SCR
233	Utah-Idaho Sugar Company	d284,826	11,199,135	2–28–30	SCR
234	United Porto Rican Sugar Co	d394,500	N. R.	6–30–29	SCR
235	Michigan Sugar Company	d441,797	N. R.	6–30–30	SCR
236	St. Louis Independent Packing Co	d618,741	N. R.	10–31–27	SCR
237	Camaguey Sugar Company	d720–422	3,934,783	9–30–29	SCR
238	Fajardo Sugar Co. of Porto Rico	d720,881	N. R.	7–31–29	SCR
239	Cuban Cane Products Co., Inc	d805,832	24,903,525	9–30–29	SCR
240	Atlantic Fruit & Sugar Company	d821,388	b9,406,940	12–31–29	SCR
241	Warner Sugar Corporation	d1,042,642	N. R.	12–31–29	SCR
242	Cuban Dominican Sugar Corp	d1,337,582	N. R.	9–30–29	SCR

b—Gross Revenue. c—Before Federal Taxes. d—Deficit. i—Total Operating Revenue. j—Before Interest. N. R.—Not Reported.
SCR—Standard Corporation Records.

[fol. 1061] Table II (immediately following) is a compilation of all companies engaged in the food or food products industry during the year 1920 as determined from the companies in Table I.

The 91 companies are arrayed in (Table II) in order from the highest net income to the lowest.

Totals—Table II

Number of companies	Year	Sales	Net income
91	(1920)	.....	$144,196,353
33	(1920)	$2,872,871,698	22,414,560

[fol. 1062]

TABLE II

No.	Name of company	1920 Net income	1920 Sales	Year ending	Source of data
1	United Fruit Company	$29,008,307	N. R.	12-31-20	SCR
2	Corn Products Refining Co	12,591,480	N. R.	12-31-20	SCR
3	Cuba Cane Sugar	12,344,135	N. R.	9-30-20	SCR
4	Cuban American Sugar Co	12,186,897	b$90,413,179	12-31-20	SCR
5	Central Aguirre Sugar Co	9,178,491	N. R.	7-31-20	SCR
6	National Biscuit Company	5,543,120	N. R.	12-31-20	SCR
7	Fajardo Sugar Co. of Porto Rico	5,456,917	N. R.	7-31-20	Poor's
8	Armour and Company (Ill.)	5,319,974	N. R.	10-30-20	Poor's
9	South Porto Rico Sugar Co	5,278,277	22,250,851	9-30-20	SCR
10	Swift & Company	5,170,383	*1,100,000,000	11- 1-20	SCR
11	Ewa Plantation Company	5,119,898	N. R.	12-31-20	Poor's
12	American Sugar Refining Co	4,404,916	N. R.	12-31-20	SCR
13	Great Western Sugar Co	4,264,171	N. R.	2-28-21	SCR
14	California Packing Corp.	4,253,015	N. R.	2-28-21	Poor's
15	Waialua Agric. Co., Ltd	3,504,722	N. R.	12-31-20	Poor's
16	Fleischmann Co. (The)	3,409,479	34,320,910	12-31-20	Poor's
17	Wrigley (Wm.) Jr., Co	3,293,748	N. R.	12-31-20	SCR
18	Libby, McNeill & Libby	2,921,033	N. R.	a3- 5-21	Poor's
19	Borden Company (The)	2,789,621	120,293,573	12-31-29	SCR

20	Manati Sugar Company	2,668,131	N. R.	10–31–20	SCR
21	Hawaiian Sugar Company	2,608,953	N. R.	12–31–20	Moody's
22	Honolulu Plantation Co.	2,650,919	N. R.	12–31–20	Poor's
23	Great Atlantic & Pacific Tea Co.	2,437,297	235,302,887	2–28–21	Moody's
24	American Stores Company	2,249,454	103,059,303	12–31–20	Poor's
25	Coca-Cola Company	2,139,166	32,341,429	12–31–20	SCR
26	New Niquero Sugar Company	1,917,392	N. R.	7–31–20	Poor's
27	Godchaux Sugars, Inc.	1,894,079	N. R.	6–30–20	Moody's
28	Wailuku Sugar Company	1,627,434	N. R.	12–31–20	Moody's
29	National Candy Company	1,528,100	N. R.	12–31–20	Poor's
30	Utah-Idaho Sugar Co.	1,417,840	12,284,053	2–28–21	Moody's
31	Francisco Sugar Co.	c1,365,309	N. R.	6–30–21	Poor's
32	Hawaiian Pineapple Co., Ltd.	1,364,229	N. R.	12–31–20	Poor's
33	San Carlos Milling Co., Ltd.	1,280,668	N. R.	12–31–20	Moody's
34	Globe Grain & Milling Co.	1,249,110	N. R.	6–30–20	Poor's
35	Onomea Sugar Company	1,207,051	N. R.	12–31–20	Poor's
36	General Baking Company	1,086,226	N. R.	12–31–20	Poor's
37	Atlantic Fruit & Sugar Company	1,058,619	N. R.	12–31–20	Poor's
38	Cuba Company (The)	1,057,957	N. R.	6–30–20	Poor's
39	American Fruit Growers, Inc.	985,427	N. R.	e6–30–20	Moody '22
40	Loose-Wiles Biscuit Co.	945,793	N. R.	12–31–20	SCR
41	International Salt Co.	892,792	N. R.	12–31–20	Poor's
42	Beatrice Creamery Co.	862,955	N. R.	12–31–20	Poor's
43	Penick & Ford	838,339	N. R.	f6–30–20	Moody's
44	Warner Sugar Corp.	c810,317	113,049,828	12–31–20	Moody's
45	Fairmont Creamery Co. (Del.)	804,863	N. R.	12–31–20	Moody's
46	American Chicle Company	792,091	N. R.	12–31–20	SCR
47	Union Sugar Company	752,205	N. R.	12–31–20	SCR
48	Pepeekeo Sugar Company	696,651	N. R.	12–31–20	Poor's
49	Kroger Grocery & Baking Co.	672,709	N. R.	12–31–20	Poor's
50	Staley (A. E.) Mfg. Co.	g629,478	15,729,441	12–31–20	Moody's

*—Approximate. a—10 months ended 3–5–21. b—Gross revenue. c—Before depreciation and taxes.
e—13 months ended 6–30–20. f—6 months ended 6–30–20. g—Estimated. N. R.—Not reported. SCR—Standard Corporation Records.

TABLE II—Continued

fol. 1063]

No.	Name of company	1920 Net income	1920 Sales	Year ending	Source of data
51	Cudahy Packing Co. (The)	$624,288	$288,802,000	10-31-20	SCR
52	International Milling Co	575,893	N. R.	8-31-20	Poors
53	Bunte Brothers	573,797	7,801,590	12-31-20	Poors '24
54	Honomu Sugar Company	556,813	N. R.	12-31-20	Poors
55	Jones Brothers Tea Company	495,333	22,743,098	12-31-20	Poors '24
56	Beech-Nut Packing Company	495,241	11,700,925	12-31-20	SCR
57	Hutchinson Sugar Plantation Co	452,104	N. R.	12-31-20	Poors
58	Austin, Nichols & Co., Inc	391,027	N. R.	1-31-21	Poors
59	Pasuhau Sugar Plantation Co	362,858	b2,358,149	12-31-20	SCR
60	Francisco Sugar Co	339,484	N. R.	6-30-21	Poors
61	Nunnally Company (The)	269,967	2,868,899	12-31-20	Poors
62	Young (J. S.) Co	197,167	N. R.	12-31-20	SCR
63	Louisiana State Rice Milling Co., Inc	190,032	N. R.	6-30-21	Poors
64	American Candy Co	167,400	2,348,121	12-31-20	Poors
65	National Tea Company	166,739	18,705,980	12-31-20	SCR
66	Booth (F. E.) Co., Inc	79,841	N. R.	12-31-20	Poors
67	Dold (Jacob) Packing Co	79,019	b56,512,175	10-30-20	Poors
68	Nuckolls Packing Co	44,152	3,234,000	12-31-20	Poors
69	Citizens Wholesale Supply Co	42,067	1,481,530	12-31-20	Poors
70	Mayer (Oscar) & Co., Inc	10,202	11,187,146	12-31-20	Poors
71	Larabee Flour Mills Co	d86,193	N. R.	6-30-21	Poors
72	American Beet Sugar Co	d99,662i	11,549,716	3-31-21	SCR
73	Hunt Brothers Packing Co	d115,811	5,318,752	12-31-20	Poors
74	Brennan Packing Co	d213,607	9,630,528	12-31-20	Poors
75	Sweets Co. of America, Inc	d240,270	689,367	12-31-20	Moodys
76	Snider Packing Corp	d260,236	11,531,017	12-31-20	SCR
77	Cornô Mills Company	d264,413	N. R.	11-30-20	Poors
78	Haytian Corp. of America	d357,349	N. R.	6-30-20	Poors
79	Western Grocer Co	d390,151	26,668,215	12-31-20	Moodys
80	Hershey Chocolate Corp	d395,739	N. R.	12-31-20	Poors

81	Michigan Sugar Co.	d423,319	N. R.	6-30-21	Poors
82	Pittsburgh Brewing Co.	d595,317	1,858,288	10-31-20	Poors
83	Caracas Sugar Co.	d845,891	N. R.	6-30-20	Moodys
84	Booth Fisheries Co.	d916,722	N. R.	12-31-20	Poors
85	Wilson & Co., Inc.	d940,850	370,000,000	12-31-20	SCR
86	Independent Brewing Co. (Pitts.)	d1,053,826	N. R.	9-30-20	SCR
87	Punta Alegre Sugar Co.	d2,068,867	j6,817,021	5-31-21	SCR
88	Jewel Tea Co., Inc.	d2,183,506	N. R.	12-31-20	Poors
89	Quaker Oats Co.	d5,824,925	N. R.	12-31-20	Poors
90	Wesson Oil & Snowdrift Co.	d8,660,614	N. R.	5-31-21	Moodys
91	Procter & Gamble Co.	d14,509,941	120,019,727	6-30-21	Moodys

b—Gross revenue. d—Deficit. i—After appropriation for depreciation and additions. j—Total operating revenue.
N. R.—Not reported. SCR—Standard Corporation Records.

[fol. 1064] Table III (immediately following) is a compilation of all domestic (U. S.) companies that reported a net income of $2,000,000 or over for the year 1929.

The 504 companies are arrayed (in Table III) in order from the highest net income to the lowest.

Totals—Table III

Number of companies	Year	Sales	Net income
504	(1929)	.....	$5,871,216,278
259	(1929)	$29,486,485,814	3,687,866,319

[fol. 1065]

TABLE III

No.	Name of Company	1929 Net income	1929 Sales	Year ending	Source of data
1	General Motors Corp.	$247,317,743	$1,504,404,472	12-31-29	SCR
2	American Tel. & Tel. Co.	217,104,872	1,070,794,449	12-31-29	SCR
3	U. S. Steel Corp.	197,592,060	1,493,505,486	12-31-29	SCR
4	Standard Oil (N. J.)	120,912,794	1,523,386,465	12-31-29	SCR
5	Pennsylvania R. R. Co.	101,378,518	a682,702,93	12-31-29	SCR
6	Standard Oil (Ind.)	78,499,754	N. R.	12-31-29	SCR
7	N. Y. Central R. R. Co.	78,277,292	a396,917,259	12-31-29	SCR
8	DuPont de Nemours	78,171,730	N. R.	12-31-29	SCR
9	Anaconda Copper Mining Co.	70,317,739	b305,751,876	12-31-29	SCR
10	General Electric Company	67,289,880	415,330,094	12-31-29	SCR
11	Cons. Gas Co. of N. Y.	65,969,506	222,524,048	12-31-29	SCR
12	Atchison, Topeka & Santa Fe Ry. Co.	61,036,804	a267,189,178	12-31-29	SCR
13	Kennecott Copper Corp.	e52,066,365	N. R.	12-31-29	SCR
14	Union Pacific R. R. Co.	49,256,043	a217,356,593	12-31-29	SCR
15	Cities Service Co.	48,423,519	185,851,054	12-31-29	SCR
16	Texas Corp.	48,318,072	N. R.	12-31-29	SCR
17	Southern Pacific Co.	47,434,930	a310,969,138	12-31-29	SCR
18	Standard Oil (Calif.)	46,633,490	N. R.	12-31-29	SCR
19	American Superpower Corp.	44,782,323	N. R.	12-31-29	SCR
20	Gulf Oil Corp. of Penn.	44,489,686	b272,413,239	12-31-29	SCR

21	Bethlehem Steel Corp.	42,242,980	342,516,207	12-31-29	SCR
22	Norfolk & Western Ry. Co.	41,786,461	a117,631,752	12-31-29	SCR
23	Standard Oil (N. Y.)	38,750,849	N. R.	12-31-29	SCR
24	International Harvester Co.	36,779,998	N. R.	12-31-29	SCR
25	Vacuum Oil Company	35,767,627	N. R.	12-31-29	SCR
26	Woolworth (F. W.) & Co.	35,664,252	303,047,172	12-31-29	SCR
27	Union Carbide & Carbon Corp.	35,427,024	N. R.	12-31-29	SCR
28	Commonwealth & Southern Corp.	33,297,552	151,404,677	11-30-29	SCR
29	Humble Oil & Refining Co.	32,535,081	N. R.	12-31-29	SCR
30	United Gas Improvement Co.	32,519,182	102,228,411	12-31-29	SCR
31	Electric Bond & Share	32,511,823	42,410,701	12-31-29	SCR
32	Reynolds (R. J.) Tobacco Co.	32,210,521	N. R.	12-31-29	SCR
33	Chesapeake & Ohio Ry. Co.	32,192,416	a129,779,115	12-31-29	SCR
34	Columbia Gas & Electric Corp.	32,161,139	b115,150,313	12-31-29	SCR
35	Allied Chemical & Dye Corp.	30,198,523	N. R.	12-31-29	SCR
36	American Tobacco Co.	30,182,669	N. R.	12-31-29	SCR
37	Sears, Roebuck & Co.	30,057,652	403,472,008	12-31-29	SCR
38	Chicago, Burlington & Quincy R. R. Co.	29,576,538	a162,409,924	12-31-29	SCR
39	North American Company	28,806,824	147,779,869	12-31-29	SCR
40	Baltimore & Ohio R. R. Co.	28,767,908	N. R.	12-31-29	SCR
41	Public Service Elect. & Gas Co.	28,547,413	b 94,286,063	12-31-29	SCR
42	Public Service Corp. of N. J.	28,518,831	N. R.	12-31-29	SCR
43	New York Edison Co.	27,574,081	N. R.	12-31-29	SCR
44	Westinghouse Electric & Mfg. Co.	27,062,611	216,364,589	12-31-29	SCR
45	Great Atlantic & Pacific Tea Co.	26,219,631	N. R.	2-28-30	SCR
46	Great Northern Ry. Co.	25,688,551	a125,932,808	12-31-29	SCR
47	Aluminum Company of America	25,318,050	N. R.	12-31-29	SCR
48	Packard Motor Car Co.	25,183,256	107,542,163	8-31-29	SCR
49	National Dairy Products	24,919,934	390,600,052	12-31-29	SCR
50	American & Foreign Power Co., Inc.	24,756,305	N. R.	12-31-29	SCR
[fol. 1066]					
51	Singer Mfg. Co.	23,723,802	N. R.	12-31-29	SCR
52	U. S. Electric Power Corp.	23,169,345	b172,762,748	12-31-29	SCR

N. R.—Not reported. SCR—Standard Corporation Records.
a—Total operating revenue. b.—Gross revenue. e—Before depletion.

TABLE III—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
53	Prairie Pipe Line Company	$22,800,453	b39,993,429	12-31-29	SCR
54	American Can Company	22,724,802	N. R.	12-31-29	SCR
55	Procter & Gamble Company	22,210,318	192,352,590	6-30-30	SCR
56	Liggett & Myers Tobacco Co.	22,017,128	N. R.	12-31-29	SCR
57	Eastman Kodak Company	22,004,915	N. R.	12-28-29	SCR
58	Chrysler Corporation	21,902,168	375,033,455	12-31-29	SCR
59	N. Y., N. H. & Hartford R. R.	21,838,556	a142,458,670	12-31-29	SCR
60	American Smelting & Refng. Co.	21,831,583	N. R.	12-31-29	SCR
61	Chile Copper Company	e21,821,932	N. R.	12-31-29	SCR
62	Northern Pacific Ry. Co.	21,808,309	a96,522,348	12-31-29	SCR
63	Middle West Utilities Co.	21,656,525	162,337,274	12-31-29	SCR
64	Youngstown Sheet & Tube Co.	21,564,174	162,826,640	12-31-29	SCR
65	Curtis Publishing Company (The)	21,534,265	N. R.	12-31-29	SCR
66	National Biscuit Company	21,422,357	N. R.	12-31-29	SCR
67	American Gas & Electric Co.	21,171,172	N. R.	12-31-29	SCR
68	Jones & Laughlin Steel Corp.	20,848,748	N. R.	12-31-29	SCR
69	International Match Corp.	20,623,530	N. R.	12-31-29	SCR
70	Republic Steel Corp.	20,526,813	N. R.	12-31-29	SCR
71	General Foods Corporation	20,519,047	128,036,791	12-31-29	SCR
72	International Tel. & Tel. Corp.	20,486,326	100,340,590	12-31-29	SCR
73	Borden Company (The)	20,403,725	328,466,989	12-31-29	SCR
74	American Radiator & Stan. San.	20,012,171	144,582,874	12-31-29	SCR
75	Goodyear Tire & Rubber Co.	19,864,374	256,227,067	12-31-29	SCR
76	Michigan Central R. R. Co.	19,335,114	N. R.	12-31-29	SCR
77	American Power & Light Co.	19,269,239	88,406,792	3-31-30	SCR
78	Philadelphia Electric Company	19,054,150	b61,825,069	12-31-29	SCR
79	North American Edison Company	18,812,911	b100,336,561	12-31-29	SCR
80	Standard Brands	18,344,391	N. R.	12-31-29	SCR
81	Southern Railway Co.	18,128,788	a143,183,948	12-31-29	SCR
82	Nash Motors Company	18,013,781	N. R.	11-30-29	SCR

83	United Fruit Company	17,802,992	N. R.	12-31-29	SCR
84	Pullman, Inc.	17,678,698	N. R.	12-31-29	SCR
85	Shell Union Oil Corporation	17,573,249	N. R.	12-31-29	SCR
86	Nevada Cons. Copper Co.	e17,493,977	45,956,490	12-31-29	SCR
87	Atlantic Refining Company	17,332,417	h153,520,041	12-31-29	SCR
88	Warner Brothers Pictures, Inc.	17,271,805	N. R.	8-31-29	SCR
89	International Shoe Co.	17,031,435	132,110,130	11-30-29	SCR
90	Drug Inc.	17,013,543	N. R.	12-31-29	SCR
91	Sinclair Cons. Oil Corp.	16,599,037	b199,268,129	12-31-29	SCR
92	Commonwealth Edison Company	16,322,769	b83,486,745	12-31-29	SCR
93	Texas Gulf Sulphur Company	e16,247,478	29,883,243	12-31-29	SCR
94	Assoc. Gas & Electric Co.	16,183,945	b68,903,253	12-31-29	SCR
95	Radio Corporation of Amer.	15,892,562	182,137,739	12-31-29	SCR
96	Pacific Gas & Electric Co.	15,740,486	b64,440,588	12-31-29	SCR
97	Corn Products Refining Co.	15,647,687	N. R.	12-31-29	SCR
98	Chicago & North Western Ry. Co.	15,599,056	a154,732,947	12-31-29	SCR
99	Niagara Hudson Power Corp.	15,588,539	b79,722,803	12-31-29	SCR
100	Paramount Publix Corporation	15,544,544	N. R.	12-23-29	SCR
[fol. 1067]					
101	Reading Company	15,508,941	a$97,196,955	12-31-29	SCR
102	Southern California Edison Co., Ltd.	15,483,958	b39,602,660	12-31-29	SCR
103	Western Union Telegraph Co.	15,474,893	a145,667,196	12-31-29	SCR
104	Deere & Company	15,181,949	N. R.	10-31-29	SCR
105	Union Oil Co. of California	15,019,635	88,864,519	12-31-29	SCR
106	Kresge (S. S.) Co.	14,952,211	156,456,732	12-31-29	SCR
107	Timken Roller Bearing Co.	14,926,306	N. R.	12-31-29	SCR
108	Prairie Oil & Gas Co.	14,331,643	b132,205,827	12-31-29	SCR
109	Standard Gas & Elect. Co.	14,287,834	b172,762,748	12-31-29	SCR
110	Chicago, Rock Island & Pacific Ry Co.	14,007,321	a147,721,562	12-31-29	SCR
111	Tide Water Associated Oil Co.	14,000,689	b175,922,744	12-31-29	SCR
112	Louisville & Nashville R. R. Co.	13,726,543	a132,055,983	12-31-29	SCR
113	Philadelphia Company	13,617,896	b63,676,776	12-31-29	SCR
114	Gillette Safety Razor Co.	13,581,683	N. R.	12-31-29	SCR

a—Total operating revenue. b—Gross revenue. e—Before depletion. h—Gross operating income. N. R.—Not reported.
SCR—Standard Corporation Records.

TABLE III—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
115	National Power & Light Co.	$13,557,090	b80,979,244	12-31-29	SCR
116	Illinois Central R. R. Co.	13,520,383	a180,976,182	12-31-29	SCR
117	Montgomery Ward & Co., Inc.	13,434,935	267,325,503	12-31-29	SCR
118	Del., Lackawanna & Western R. R. Co.	13,340,130	a81,743,222	12-31-29	SCR
119	Phillips Petroleum Company	13,212,591	b51,106,897	12-31-29	SCR
120	Detroit Edison Company	13,146,064	b56,558,279	12-31-29	SCR
121	Swift & Company	13,076,815	1,000,000,000*	11- 2-29	SCR
122	Duquesne Light Co.	12,917,522	N. R.	12-31-29	SCR
123	Hearst Cons. Publications, Inc.	12,854,626	85,273,739	12-31-29	SCR
124	Coca-Cola Company	12,758,276	39,260,813	12-31-29	SCR
125	National Steel Corp.	12,573,683	N. R.	12-31-29	SCR
126	Buffalo, Niagara & Eastern Power Corp.	12,479,642	a36,951,937	12-31-29	SCR
127	Penney (J. C.)	12,413,377	209,690,417	12-31-29	SCR
128	Ohio Oil Company	12,372,097	N. R.	12-31-29	SCR
129	Missouri Pacific R. R. Co.	12,217,763	a139,807,915	12-31-29	SCR
130	Consumers Power Company	12,047,140	N. R.	12-31-29	SCR
131	Atlantic Coast Line Railroad Co.	11,921,507	a72,371,894	12-31-29	SCR
132	Newmont Mining Corp.	11,777,048	N. R.	12-31-29	SCR
133	Loew's Inc.	11,756,956	116,201,937	8-31-29	SCR
134	Empire Gas & Fuel Co.	11,718,992	68,892,665	11-30-29	SCR
135	Inland Steel Company	11,712,374	68,585,431	12-31-29	SCR
136	Burroughs Adding Machine Co.	11,684,557	N. R.	12-31-29	SCR
137	Erie R. R. Co.	11,677,709	a129,230,437	12-31-29	SCR
138	Pittsburgh Plate Glass Co.	11,644,833	N. R.	12-31-29	SCR
139	Wrigley (Wm.) Jr., Co.	11,608,708	N. R.	12-31-29	SCR
140	Caterpillar Tractor Co.	11,600,446	51,812,461	12-31-29	SCR
141	Hudson Motor Car Co.	11,594,854	201,017,596	12-31-29	SCR
142	Crane Company	11,558,085	N. R.	12-31-29	SCR
143	Northern Ohio Power & Light Co.	11,536,716	N. R.	4-30-30	SCR
144	New England Telephone & Telegraph Co.	11,499,173	N. R.	12-31-29	SCR

145	American Light & Traction	11,465,496	b49,297,517	12-31-29	SCR
146	United Light & Power Co.	11,381,767	96,672,008	6-30-30	SCR
147	Studebaker Corp.	11,346,028	145,303,833	12-31-29	SCR
148	Ingersoll-Rand Co.	10,689,686	N. R.	12-31-29	SCR
149	Electric Auto-Lite Company	10,514,369	N. R.	12-31-29	SCR
150	St. Louis-San Francisco Ry. Co.	10,228,860	a89,109,286	12-31-29	SCR
[fol. 1068]					
151	National Lead Company	10,222,897	N. R.	12-31-29	SCR
152	Inter. Paper & Power Co	9,886,003	148,575,724	12-31-29	SCR
153	Pan Amer. Petroleum & Transport Co	9,825,992	N. R.	12-31-29	SCR
154	Armour & Company (Ill.)	9,810,518	900,000,000*	11- 2-29	SCR
155	United Shoe Machinery Corp	9,670,923	N. R.	2-28-30	SCR
156	Electric Power & Light Corp	9,614,302	b61,204,469	3-31-30	SCR
157	Fox Film Corp	9,469,050	N. R.	12-28-29	SCR
158	Marshall, Field & Co., Inc	9,388,713	179,659,338	12-31-29	SCR
159	New Jersey Zinc Co. (The)	9,221,794	N. R.	12-31-29	SCR
160	Cleveland, Cinn., Chic. & St. L. Ry. Co	9,215,987	N. R.	12-31-29	SCR
161	R. H. Macy & Co., Inc	9,051,840	135,856,663	2- 1-30	SCR
162	Interborough Rapid Transit Co	9,050,666	b69,174,295	6-30-29	SCR
163	Continental Oil Company	9,028,661	81,893,797	12-31-29	SCR
164	Continental Can Co	8,967,702	N. R.	12-31-29	SCR
165	Union Elect. Light & Power Co. (Mo.)	8,928,591	b31,625,471	3-31-30	SCR
166	Colgate-Palmolive-Peet Co	8,910,631	100,560,689	12-31-29	SCR
167	Westinghouse Air Brake Co	8,822,711	N. R.	12-31-29	SCR
168	Northern States Power Co. (Del.)	8,806,885	N. R.	12-31-29	SCR
169	Quaker Oats Company	8,735,205	N. R.	12-31-29	SCR
170	Richfield Oil Co. of Calif	8,554,494	83,430,834	12-31-29	SCR
171	Missouri-Kansas-Texas R. R. Co	8,526,241	a56,024,439	12-31-29	SCR
172	Duke Power Co	8,521,529	N. R.	12-31-29	SCR
173	Cleveland Elec. Illuminating Co. (The)	8,418,728	N. R.	12-31-29	SCR
174	Parke, Davis & Co	8,381,283	N. R.	12-31-29	SCR
175	Otis Elevator Co	8,370,528	19,061,763	12-31-29	SCR

N. R.—Not reported. SCR—Standard Corporation Records.
a—Total operating revenue. b—Gross revenue. *—Approximate.

TABLE III—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
176	Mohawk Hudson Power Corp	$8,363,878	N. R.	12-31-29	SCR
177	Ohio Bell Telephone Co	8,351,373	N. R.	12-31-29	SCR
178	National Cash Register Co	8,339,640	57,607,181	12-31-29	SCR
179	Sun Oil Company	8,242,492	b86,007,947	12-31-29	SCR
180	Crucible Steel Co. of America	8,162,344	N. R.	12-31-29	SCR
181	United Aircraft & Transport Co	8,058,404	31,423,618	12-31-29	SCR
182	Wheeling Steel Corp	8,005,664	84,687,303	12-31-29	SCR
183	New England Power Association	8,002,454	N. R.	12-31-29	SCR
184	Electric Storage Battery Co	7,910,905	48,412,420	12-31-29	SCR
185	Wabash Ry. Co	7,854,404	a76,632,974	12-31-29	SCR
186	American Water Works & Elec. Co	7,821,478	b54,119,004	12-31-29	SCR
187	Del. & Hudson Co	7,808,713	a41,421,378	12-31-29	SCR
188	Calumet & Arizona Mining Co	e7,733,603	N. R.	12-31-29	SCR
189	Firestone Tire & Rubber Co	7,694,918	144,585,804	10-31-29	SCR
190	Mid-Continent Pet. Corp	7,683,378	N. R.	12-31-29	SCR
191	Borg Warner Corp	7,669,795	N. R.	12-31-29	SCR
192	Pacific Lighting Corp	7,641,103	b48,874,970	6-30-30	SCR
193	Cons. Gas Elec. Light & Pwr. Co. of Balt	7,627,545	a28,017,878	12-31-29	SCR
194	Utilities Power & Light Corp	7,617,657	b52,348,686	12-31-29	SCR
195	Gold Dust Corp	7,586,963	N. R.	12-31-29	SCR
196	St. Joseph Lead Co	7,466,003	N. R.	12-31-29	SCR
197	Pere Marquette Ry. Co	7,458,460	a48,468,439	12-31-29	SCR
198	Goodrich (B. F.) Co	7,446,310	164,494,957	12-31-29	SCR
199	Hershey Chocolate Corp	7,435,779	41,371,913	12-31-29	SCR
200	Brooklyn-Manhattan Transit Corp	e7,419,644	a60,700,981	6-30-30	SCR
[fol. 1069]					
201	Bendix Aviation Corp	7,416,408	$12,765,769	12-31-29	SCR
202	N. Y., Chic. & St. Louis R. R. Co	7,390,042	a56,385,457	12-31-29	SCR
203	Lehigh Valley R. R. Co	7,362,574	a71,722,735	12-31-29	SCR
204	Smith (A. O.) Corp	7,308,962	N. R.	7-31-29	SCR
205	Underwood Elliott Fisher Co	7,283,582	N. R.	12-31-29	SCR

206	Edison Electric Illuminating Co	7,263,323	b29,664,585	12-31-29	SCR
207	General Baking Co	7,239,221	N. R.	12-28-29	SCR
208	Barnsdall Corp	7,204,325	31,285,004	12-31-29	SCR
209	Public Service Co. of Northern Ill	7,100,870	b33,329,811	12-31-29	SCR
210	Chic., Milw., St. Paul & Pac. R. R. Co	7,074,014	a171,361,385	12-31-29	SCR
211	Lambert Company	7,019,349	N. R.	12-31-29	SCR
212	American Sugar Refining Co	6,928,794	N. R.	12-31-29	SCR
213	Central Pacific Ry. Co	6,881,882	N. R.	5-31-29	SCR
214	American Locomotive Co	6,851,301	N. R.	12-31-29	SCR
215	Mack Trucks, Inc	6,841,068	57,227,200	12-31-29	SCR
216	Stewart-Warner Corp	6,838,938	N. R.	12-31-29	SCR
217	Maytag Company (The)	6,838,884	25,625,557	12-31-29	SCR
218	Metro-Goldwyn Pictures Corp	6,818,918	N. R.	8-31-29	SCR
219	People's Gas Light & Coke Co	6,782,960	41,887,037	12-31-29	SCR
220	National Fuel Gas Co	6,726,192	N. R.	12-31-29	SCR
221	Inter. Business Machines Corp	6,705,967	N. R.	12-31-29	SCR
222	Continental Baking Corp	6,671,101	N. R.	12-31-29	SCR
223	Standard Oil (Kentucky)	6,652,991	N. R.	12-31-29	SCR
224	Illinois Power & Light Corp	6,604,041	b37,501,235	12-31-29	SCR
225	American Stores Co	6,594,822	143,346,157	12-31-29	SCR
226	Johns-Manville Corp	6,591,917	61,994,885	12-31-29	SCR
227	Lone Star Gas Corp	6,540,581	b18,210,710	12-31-29	SCR
228	Pure Oil Company	6,539,522	b76,889,316	3-31-30	SCR
229	Long Island R. R. Co. (The)	6,353,676	N. R.	12-31-29	SCR
230	May Dept. Stores	6,174,925	112,724,226	1-31-30	SCR
231	Safeway Stores, Inc	6,147,313	213,496,254	12-31-29	SCR
232	American Rolling Mills Co	6,110,570	70,434,232	12-31-29	SCR
233	General Gas & Electric Corp. (Del.)	6,086,052	N. R.	12-31-29	SCR
234	City Ice & Fuel Co. (The)	6,056,672	27,592,429	12-31-29	SCR
235	Remington Rand, Inc	6,040,554	64,180,507	3-31-30	SCR
236	California Packing Corp	6,024,349	N. R.	2-28-30	SCR
237	Sherwin-Williams Co. (The)	6,019,475	75,778,072	8-31-29	SCR
238	Commercial Credit Co	6,011,697	22,041,183	12-31-29	SCR

N. R.—Not reported. SCR—Standard Corporation Records. a—Total operating revenue. b—Gross revenue.
c—Preliminary. e—Before depletion. h—Gross operating income.

TABLE III—Continued

No.	Name of Company	1929 Net income	1929 Sales	Year ending	Source of data
239	Boston & Maine Railroad Co	$5,993,841	$a78,481,438	12-31-29	SCR
240	Air Reduction Co	5,972,996	21,801,994	12-31-29	SCR
241	Ohio Power Company (The)	5,971,796	N. R.	12-31-29	SCR
242	New York Power & Light Corp	5,956,050	N. R.	12-31-29	SCR
243	Kroger Grocery & Baking Co	5,919,096	286,611,214	12-31-29	SCR
244	Independent Oil & Gas Co	5,882,180	b26,504,299	12-31-29	SCR
245	Kress (S. H.) & Co	5,834,400	68,474,993	12-31-29	SCR
246	Great Western Sugar Co	5,810,267	N. R.	2-28-30	SCR
247	Skelly Oil Company	5,786,490	b32,633,438	12-31-29	SCR
248	General American Tank Car Corp	5,770,741	30,181,826	12-31-29	SCR
249	Virginian Railway Co	5,752,784	a19,871,637	12-31-29	SCR
250	Cleveland-Cliffs Iron Co. (The)	5,685,029	N. R.	12-31-29	SCR
[fol. 1079]					
251	Rio Grande Oil Company	5,659,943	23,308,468	12-31-29	SCR
252	Purity Bakeries Corporation	5,652,285	48,219,021	12-28-29	SCR
253	Brooklyn Union Gas Co. (The)	5,553,268	b25,920,991	12-31-29	SCR
254	Phelps Dodge Corporation	5,371,623	38,705,671	12-31-29	SCR
255	American Car and Foundry Company	5,363,765	N. R.	4-30-30	SCR
256	Calumet & Hecla Cons. Copper Co	5,326,932	20,665,652	12-31-29	SCR
257	Harbison-Walker Refractories, Co	5,256,413	N. R.	12-31-29	SCR
258	Hocking Valley Ry. Co	5,189,901	b20,888,860	12-31-29	SCR
259	South Pennsylvania Oil Company	5,139,296	N. R.	12-31-29	SCR
260	American Steel Foundries	5,121,487	N. R.	12-31-29	SCR
261	U. S. Gypsum Company	5,102,305	N. R.	12-31-29	SCR
262	Central R. R. Co. of N. J.	5,042,755	a58,136,940	12-31-29	SCR
263	Armstrong Cork Company	4,980,537	N. R.	12-31-29	SCR
264	International Cement Corp	4,950,433	28,370,032	12-31-29	SCR
265	General Theatres Equipment, Inc	4,903,183	11,250,330	12-31-29	SCR
266	New York & Queens Electric Lt. & Pwr	4,867,737	18,126,566	12-31-29	SCR
267	Inspiration Cons. Copper Company	e4,753,802	13,182,122	12-31-29	SCR
268	West Virginia Pulp & Paper Company	4,750,101	N. R.	10-31-29	SCR

269	First National Stores, Inc	4,736,057	107,635,216	3-29-30	SCR
270	Montana Power Company (The)	4,729,900	N. R.	12-31-29	SCR
271	Cerro de Pasco Copper Corp	4,729,113	28,656,394	12-31-29	SCR
272	Transcontinental Oil Company	4,723,990	b18,983,920	12-31-29	SCR
273	U. S. Industrial Alcohol Co	4,720,858	N. R.	12-31-29	SCR
274	General Cable Corporation	4,709,160	N. R.	12-31-29	SCR
275	Koppers Gas & Coke Company	4,689,351	N. R.	12-31-29	SCR
276	Wheeling & Lake Erie Ry. Co	4,679,321	a21,335,222	12-31-29	SCR
277	North American Light & Power Co	4,676,115	b45,806,802	12-31-29	SCR
278	St. Regis Paper Company	4,664,874	b22,950,590	12-31-29	SCR
279	Great Northern Iron Ore Properties	4,659,184e	N. R.	12-31-29	SCR
280	Simmons Company	4,626,561	50,363,873	12-31-29	SCR
281	General Mills, Inc	4,609,101	163,071,661	5-31-30	SCR
282	Patino Mines & Enter. Cons. Inc	4,573,239	b20,238,789	12-31-29	SCR
283	Pittsburgh Steel Company	4,535,437	N. R.	6-30-29	SCR
284	Owens-Illinois Glass Company	4,451,826	N. R.	12-31-29	SCR
285	Lehigh & Wilkes-Barre Coal Co. (Pa.)	4,408,718	b29,803,573	12-31-29	SCR
286	Spang, Chalfont & Co., Inc	4,394,418	N. R.	12-31-29	SCR
287	Crown Zellerbach Corporation	4,374,317	N. R.	4-30-30	SCR
288	Hercules Powder Company	4,358,904	b32,976,417	12-31-29	SCR
289	Philadelphia Rapid Transit	4,337,509	a55,909,553	12-31-29	SCR
290	Allis-Chalmers Manufacturing Co	4,330,888	45,302,355	12-31-29	SCR
291	General Cigar Company	4,295,961	13,994,420	12-31-29	SCR
292	Buffalo General Electric Co	4,292,757	N. R.	12-31-29	SCR
293	Checker Cab Manufacturing Corp	4,280,416	N. R.	12-31-29	SCR
294	Richman Brothers Company	4,208,037	N. R.	12-31-29	SCR
295	Standard Oil of Ohio	4,202,385	62,871,089	12-31-29	SCR
296	Canon Mills Company	4,160,067	30,464,094	12-31-29	SCR
297	Scovill Mfg. Company	4,120,087	N. R.	12-31-29	SCR
298	Hahn Department Stores, Inc	4,090,061	112,323,306	1-31-30	SCR
299	Freeport Texas Company	e4,085,042	14,778,332	11-30-29	SCR
300	Coty, Inc	4,068,892	N. R.	12-31-29	SCR

a—Total operating revenue. b—Gross revenue. e—Before depletion. N. R.—Not reported.
SCR—Standard Corporation Records. h—Gross operating income.

TABLE III—Continued

[fol. 1071]

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
301	Eastern Gas & Fuel Associates	$4,043,968	N. R.	12-31-29	SCR
302	McKesson & Robbins, Inc., (Md.)	4,014,408	$140,635,026	12-31-29	SCR
303	Superheater Company	3,989,764	N. R.	12-31-29	SCR
304	Kansas City Power & Light Co	3,960,745	N. R.	12-31-29	SCR
305	Allied Power & Light Corporation	3,954,956	N. R.	6-30-29	SCR
306	Kimberly-Clark Corporation	3,872,615	22,373,267	12-31-29	SCR
307	Stone & Webster, Inc	3,833,047	N. R.	3-31-30	SCR
308	Miami Copper Company	e3,821,081	11,033,223	12-31-29	SCR
309	U. S. Smelting, Refining & Mining Co	3,786,692	N. R.	12-31-29	SCR
310	Petroleum Corporation of America	3,752,530	N. R.	1-16—12-31-29	SCR
311	National Supply Co. of Del. (The)	3,715,974	N. R.	12-31-29	SCR
312	Vick Chemical Company	3,704,607	N. R.	6-30-29	SCR
313	Hanna (M. A.) Co. (The)	3,698,624	N. R.	12-31-29	SCR
314	Otis Steel Company	3,687,690	N. R.	12-31-29	SCR
315	Commercial Solvents Corporation	3,667,402	N. R.	12-31-29	SCR
316	Union Tank Car Co	3,666,589	N. R.	12-31-29	SCR
317	Columbian Carbon Company	3,665,491	12,659,484	12-31-29	SCR
318	Howe Sound Company	3,662,475	b16,346,101	12-31-29	SCR
319	Case (J. I.) Company	3,653,753	N. R.	12-31-29	SCR
320	Nashville, Chattanooga & St. L. Ry	3,623,948	N. R.	12-31-29	SCR
321	Indianapolis Power & Light Company	f3,609,585	N. R.	12-31-29	SCR
322	Metropolitan Edison Company	3,604,264	N. R.	12-31-29	SCR
323	Auburn Automobile Company	3,603,200	37,551,442	11-30-29	SCR
324	Southern New England Tel. Company	3,575,176	b16,666,184	12-31-29	SCR
325	Reynolds Metals Company	3,558,582	N. R.	12-31-29	SCR
326	Colorado & Southern Ry. Co	3,545,069	N. R.	12-31-29	SCR
327	American Laundry Machinery Co	3,542,140	N. R.	12-31-29	SCR
328	Kraft-Phenix Cheese Company	3,514,840	86,393,675	12-31-29	SCR
329	Oliver Farm Equipment Company	3,502,996	27,437,973	12-31-29	SCR
330	Midland Utilities Company	3,484,894	27,317,244	12-31-29	SCR
331	Link-Belt Company	3,484,686	26,519,339	12-31-29	SCR

332	Motor Wheel Corporation	3,479,664	N. R.	12-31-29	SCR
333	Hupp Motor Car Corporation	3,468,937	52,505,643	12-31-29	SCR
334	U. S. Realty & Improvement Co	3,460,642	N. R.	j12-31-29	SCR
335	Morrell (John) & Co., Inc	3,435,799	94,660,595	k11-2-29	SCR
336	American Ice Company	3,431,124	20,804,078	12-31-29	SCR
337	Penn-Ohio Edison Company	3,425,070	b28,802,052	6-30-29	SCR
338	United Piece Dye Works (The)	3,391,321	N. R.	12-31-29	SCR
339	Bibb Manufacturing Company	*3,389,000	N. R.	8-31-29	SCR
340	Federal Water Service Corp	3,380,706	b15,867,080	12-31-29	SCR
341	American Bank Note Company	3,380,592	N. R.	12-31-29	SCR
342	Revere Copper & Brass, Inc	3,379,679	N. R.	12-31-29	SCR
343	Household Finance Corporation	3,372,418	N. R.	12-31-29	SCR
344	Kansas City Southern Ry. Company	3,365,219	a21,978,222	12-31-29	SCR
345	Shattuck (F. G.) Co	3,355,720	26,442,206	12-31-29	SCR
346	National Public Service Corp	3,348,242	31,709,518	12-31-29	SCR
347	American Home Products Corp	3,340,692	13,644,606	12-31-29	SCR
348	Northern Indiana Public Service Co	3,337,134	N. R.	12-31-29	SCR
349	Libby-Owens Ford Glass Co	3,316,953	N. R.	9-30-29	SCR
350	Allegheny Steel Company	3,311,492	b28,863,517	12-31-29	SCR
[fol. 1072]					
351	Associated Dry Goods Corporation	3,304,986	N. R.	1-31-30	SCR
352	Consolidated Cigar Corporation	3,302,085	N. R.	12-31-29	SCR
353	Bucyrus-Erie Company	3,301,960	N. R.	12-31-29	SCR
354	Kelsey-Hayes Wheel Corporation	3,281,876	N. R.	12-31-29	SCR
355	American Chain Company, Inc	3,279,341	N. R.	12-31-29	SCR
356	Pittsburgh Screw & Bolt Corp	3,271,749	N. R.	12-31-29	SCR
357	Dayton Power & Light Co. (The)	3,256,235	N. R.	12-31-29	SCR
358	American Metal Co., Ltd	3,252,879	N. R.	12-31-29	SCR
359	American Brake Shoe & Foundry Co	3,230,080	N. R.	12-31-29	SCR
360	Torrington Co. (The) (of Maine)	3,207,386	N. R.	6-30-29	SCR
361	Raybestos-Manhattan, Inc	3,206,294	22,290,619	12-31-29	SCR
362	Island Creek Coal Company	3,198,101	N. R.	12-31-29	SCR

N. R.—Not reported. SCR—Standard Corporation Records. i—9 mos. ended 3/31/30. e—Before depletion. b—Gross revenue.
f—Before taxes and depreciation. j—8 mos. ended 12/31/29. k—13 mos. ended 11/2/29. *—Approximate.
a—Total operating revenue.

TABLE III—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
363	Boston Elevated Ry. Company	$3,183,601	b34,007,696	12-31-29	SCR
364	Group Number One Oil Corporation	3,176,811	N. R.	12-31-29	SCR
365	Hawaiian Pineapple Co., Ltd.	3,160,308	15,201,487	12-31-29	SCR
366	New England Public Service Co	3,104,669	N. R.	12-31-29	SCR
367	Walgreen Company	3,100,466	46,622,639	12-31-29	SCR
368	Ward Baking Corporation	3,124,400	N. R.	12-28-29	SCR
369	General Ry. Signal Co.	3,118,345	N. R.	12-31-29	SCR
370	Detroit Street Railways	3,103,189	N. R.	12-31-29	SCR
371	Indiana Harbor Belt R. R. Co.	3,086,699	b12,967,466	12-31-29	SCR
372	Long Island Lighting Company	3,085,128	N. R.	12-31-29	SCR
373	Cincinnati, New Orleans & Texas	3,059,681	N. R.	12-31-29	SCR
374	Grant (W. T.) Co.	3,057,750	65,902,419	1-31-30	SCR
375	National Electric Power Company	3,049,098	N. R.	12-31-29	SCR
376	Midland United Company	3,043,596	N. R.	12-31-29	SCR
377	Indian Territory Illuminating Oil	3,033,281	N. R.	10-31-29	SCR
378	Columbus Railway, Power & Light	3,019,558	N. R.	12-31-29	SCR
379	Greene Cananea Copper Company	3,013,254	N. R.	12-31-29	SCR
380	Magma Copper Company	e3,004,764	N. R.	12-31-29	SCR
381	Warren Brothers Company	3,002,238	35,364,069	12-31-29	SCR
382	United Verde Extension Mining Co	2,988,897	b11,780,473	12-31-29	SCR
383	San Joaquin Light & Power Corp.	2,986,843	b11,336,744	12-31-29	SCR
384	Lehigh Coal & Navigation Company	2,975,088	b24,125,367	12-31-29	SCR
385	National Sugar Refining Co.—N. J.	2,954,744	N. R.	12-31-29	SCR
386	Celanese Corp of America	2,952,321	N. R.	12-31-29	SCR
387	White Star Refining Co.	2,949,600	N. R.	12-31-29	SCR
388	Glidden Company	2,941,610	38,319,739	10-31-29	SCR
389	Mohawk Valley Company	2,921,146	b14,729,498	12-31-29	SCR
390	Western Md. Ry. Co.	2,917,822	a18,985,707	12-31-29	SCR
391	Connecticut Electric Service Co.	2,909,161	N. R.	12-31-29	SCR
392	Spring Valley Water Company	2,900,045	6,942,305	12-31-29	SCR
393	Congress Cigar Company, Inc.	2,882,116	15,906,394	12-31-29	SCR

394	Atlantic, Gulf & W. Indies S. S.	2,868,914	a34,011,399	12-31-29	SCR
395	General Public Service Corp	2,865,237	N. R.	12-31-29	SCR
396	Paraffine Companies, Inc	2,863,258	N. R.	6-30-29	SCR
397	Blaw-Knox Company	2,838,735	17,493,414	12-31-29	SCR
398	Canada Dry Ginger Ale, Inc	2,835,293	10,624,629	12-31-29	SCR
399	Ohio Brass Company (The)	2,823,057	N. R.	12-31-29	SCR
400	Libby, McNeill & Libby	2,822,532	N. R.	3-1-30	SCR
[fol. 1073]					
401	Houdaille-Hershey Company	2,819,669	N. R.	12-31-29	SCR
402	Lago Oil & Transport Corporation	2,816,144	21,330,028	12-31-29	SCR
403	Pillsbury Flour Mills, Inc	2,814,564	N. R.	6-30-29	SCR
404	Kayser (Julius) & Company	2,810,268	28,659,267	6-30-29	SCR
405	Western Massachusetts Cos	2,776,235	b9,260,526	12-31-29	SCR
406	Endicott Johnson Corporation	2,771,564	68,415,058	12-31-29	SCR
407	U. S. Tobacco Company	2,771,037	N. R.	12-31-29	SCR
408	Amerada Corporation	2,758,900	N. R.	12-31-29	SCR
409	Fox Theatres Corporation	2,748,006	N. R.	10-27-29	SCR
410	Federated Department Stores, Inc	2,740,114	117,003,398	1-31-30	SCR
411	Lehigh Portland Cement Company	2,737,477	19,346,791	11-30-29	SCR
412	Salt Creek Producers Association, Inc	2,736,240	N. R.	12-31-29	SCR
413	National Tea Company	2,731,267	90,210,077	12-31-29	SCR
414	Loose-Wiles Biscuit Company	2,714,865	N. R.	12-31-29	SCR
415	Marlin-Rockwell Corporation	2,707,405	N. R.	12-31-29	SCR
416	Beech-Nut Packing Company	2,693,749	23,732,089	12-31-29	SCR
417	Cutler Hammer, Inc	2,687,874	12,368,340	12-31-29	SCR
418	Matson Navigation Company	2,653,044	N. R.	12-31-29	SCR
419	Florsheim Shoe Co. (The)	2,622,453	N. R.	10-31-29	SCR
420	Bohn Aluminum & Brass Corporation	2,619,722	b4,135,517	12-31-29	SCR
421	Interlake Steamship Co. (The)	2,612,874	N. R.	12-31-29	SCR
422	Yale & Towne Manufacturing Co	2,585,624	18,734,066	12-31-29	SCR
423	U. S. Pipe & Foundry Company	2,581,230	N. R.	12-31-29	SCR
424	American Machine & Foundry Co	2,560,643	7,097,753	12-31-29	SCR
425	Midland Steel Products Co. (The)	2,555,424	N. R.	12-31-29	SCR

N. R.—Not reported. SCR—Standard Corporation Records. a—Total operating revenue.
b—Gross revenue. e—Before depletion.

TABLE III—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
426	Acme Steel Company	$2,553,214	N. R.	12-31-29	SCR
427	General Refractories Company	2,553,124	N. R.	12-31-29	SCR
428	White Motor Company	2,547,646	48,652,557	12-31-29	SCR
429	Wesson Oil & Snowdrift Company	2,547,137	N. R.	8-31-29	SCR
430	Atlas Powder Company	2,542,692	22,011,930	12-31-29	SCR
431	American Hardware Corp.	2,533,708	N. R.	1-1-30	SCR
432	Worthington Pump & Machinery Corp.	2,529,[illegible]6	N. R.	12-31-29	SCR
433	Alabama Great Southern R. R. Co.	2,520,861	a10,326,630	12-31-29	SCR
434	Hart, Schaffner & Marx	2,514,676	N. R.	11-30-29	SCR
435	Cudahy Packing Co. (The)	2,512,850	267,960,185	11-2-29	SCR
436	Sparks-Withington Company	2,510,322	17,282,162	6-30-29	SCR
437	Blumenthal (Sydney) & Co., Inc.	2,497,194	18,409,469	12-31-29	SCR
438	Chicago Yellow Cab Co., Inc.	2,492,655	N. R.	12-31-29	SCR
439	Beatrice Creamery Company	2,489,353	83,681,636	2-28-30	SCR
440	Cincinnati and Suburban Bell Tel. Co.	2,480,966	N. R.	12-31-29	SCR
441	Babcock & Wilcox Company	2,439,003	N. R.	12-31-29	SCR
442	Creole Petroleum Corporation	2,434,189	N. R.	12-31-29	SCR
443	Briggs Manufacturing Company	2,426,669	N. R.	12-31-29	SCR
444	Inter. Mercantile Marine	2,423,350	a15,303,564	12-31-29	SCR
445	Equitable Office Building Corporation	2,415,548	N. R.	4-30-30	SCR
446	McKeesport Tin Plate Company (The)	2,402,200	17,232,562	12-31-29	SCR
447	Consolidated Film Industries, Inc.	2,389,373	9,644,800	12-31-29	SCR
448	Colorado Fuel & Iron	2,350,048	N. R.	12-31-29	SCR
449	Fairbanks Morse & Company	2,348,672	31,504,908	12-31-29	SCR
450	Hartford Electric Light Company	2,343,600	N. R.	12-31-29	SCR
[fol. 1074]					
451	Bunker Hill & Sullivan Mng. & Con. Co.	2,329,046	N. R.	12-31-29	SCR
452	American Cyanamid Company	2,328,928	N. R.	6-30-29	SCR
453	Helme (Geo. W.) Company	2,324,993	N. R.	12-31-29	SCR
454	Mathieson Alkali Works, Inc.	2,324,276	N. R.	12-31-29	SCR
455	Oklahoma Natural Gas Corporation	m2,312,692	N. R.	12-31-29	SCR

456	Ryerson (Joseph T.) & Son, Inc	2,308,084	N. R.	12-31-29	SCR
457	Wilson & Company, Inc	2,304,592	310,000,000	11- 2-29	SCR
458	Baldwin Locomotive Works (The)	2,300,463	42,796,587	12-31-29	SCR
459	Truscon Steel Company	2,297,465	36,090,469	12-31-29	SCR
460	U. S. Playing Card Company	2,294,761	N. R.	12-31-29	SCR
461	South Porto Rico Sugar Company	2,278,966	15,234,506	9-30-29	SCR
462	Horn & Hardart Co. (N. Y.)	2,274,719	b17,436,155	12-31-29	SCR
463	National Department Stores, Inc	2,269,364	83,457,272	1-31-30	SCR
464	McCrory Stores Corporation	2,257,582	N. R.	12-31-29	SCR
465	United Biscuit Company of America	2,254,098	b9,347,834	12-31-29	SCR
466	Niagara, Lockport & Ontario Power Co	2,253,986	b11,610,240	12-31-29	SCR
467	Trico Products Corporation	2,249,948	N. R.	12-31-29	SCR
468	Hudson & Manhattan R. R. Company	2,247,210	a8,964,657	12-31-29	SCR
469	Plymouth Oil Company	2,247,091	b5,746,994	12-31-29	SCR
470	Filenes (Wm.) Sons Company	2,234,981	47,422,264	1-31-30	SCR
471	Associated Telephone & Telegraph Co	2,233,224	b13,321,583	12-31-29	SCR
472	McGraw-Hill Publishing Co., Inc	2,231,993	N. R.	12-31-29	SCR
473	Mergenthaler Linotype Company	2,228,615	N. R.	9-30-29	SCR
474	Hormel (Geo. A.) & Company	2,217,397	40,047,231	10-26-29	SCR
475	Congoleum-Nairn, Inc	2,213,831	N. R.	12-31-29	SCR
476	Young (L. A.) Spring & Wire Corp	2,213,026	N. R.	12-31-29	SCR
477	Stanley Works (The)	2,206,188	N. R.	12-31-29	SCR
478	Holland Furnace Company	2,202,378	18,671,828	12-31-29	SCR
479	Federal Mining & Smelting Company	2,201,757	N. R.	12-31-29	SCR
480	Honolulu Consolidated Oil Company	2,200,762	N. R.	12-31-28	SCR
481	Roessler & Hasslacher Chemical Corp	2,186,694	N. R.	12-31-29	SCR
482	McCall Corporation	2,173,887	12,974,158	12-31-29	SCR
483	MacMarr Stores, Inc	2,173,523	83,972,105	12-31-29	SCR
484	Northern Central Railway Company	2,146,368	N. R.	12-31-29	SCR
485	Minnesota & Ontario Paper Company	2,165,877	N. R.	12-31-29	SCR
486	Interlake Iron Corporation	2,161,803	N. R.	12-31-29	SCR
487	Louisville Gas & Electric Co. (Del.)	2,154,533	N. R.	12-31-29	SCR
488	Motor Products Corporation	2,133,769	N. R.	12-31-29	SCR
489	Starrett Corporation	2,124,318	N. R.	3-31-30	SCR

N. R.—Not reported. SCR—Standard Corporation Records. a—Total operating revenue. b—Gross revenue.
m—Before Federal Taxes and depletion.

TABLE III—Continued

No.	Name of company	1929 Net income	1929 Sales	Year ending	Source of data
490	Spicer Mfg. Corp	$2,119,885	N. R.	12-31-29	SCR
491	International Printing Ink Corp	2,119,154	20,071,002	12-31-29	SCR
492	Manville-Jencks Company	2,116,427	N. R.	6-29-29	SCR
493	Hazel-Atlas Glass Company	2,108,619	N. R.	12-28-29	SCR
494	American Chicle Company	2,107,597	N. R.	12-31-29	SCR
495	Staley (A. E.) Mfg. Company	2,104,930	N. R.	12-31-29	SCR
496	Bliss (E. W.) Company	2,096,819	N. R.	12-31-29	SCR
497	National Acme Company (The)	2,087,334	N. R.	12-31-29	SCR
498	Pitts. & West Va. Ry. Co	2,083,348	N. R.	12-31-29	SCR
499	Newton Steel Company (The)	2,077,650	N. R.	12-31-29	SCR
500	Arundel Corporation (The)	2,059,841	N. R.	12-31-29	SCR
501	Mississippi River Power Company	2,050,708	N. R.	12-31-29	SCR
502	Spalding (A. G.) & Bros	2,050,447	27,886,334	10-31-29	SCR
503	Minneapolis, St. Paul & S. S. M. Ry	2,042,025	N. R.	12-31-29	SCR
504	Commonwealth Subsidiary Corporation	2,003,018	N. R.	12-31-29	SCR

N. R.—Not reported. SCR—Standard Corporation Records.

[fol. 1075]

Table IV (immediately following) is a compilation of all domestic (U. S.) companies that reported a net income of $2,000,000 or over for the year 1920 as determined from the companies in Table III.

The 185 companies are arrayed in order (in Table IV) from the highest net income to the lowest.

Totals—Table IV

Number of companies	Year	Sales	Net income
185	(1920)	.....	$1,693,032,571
73	(1920)	$9,366,472,793	784,579,069

[fol. 1076]

TABLE IV

No.	Name of company	1920 Net income	1920 Sales	Year ending	Source of date
1	Standard Oil of New Jersey	$164,461,409	$657,909,828b	12-31-20	SCR
2	U. S. Steel Corporation	109,694,228	1,755,477,025b	12-31-20	SCR
3	American Telephone & Telegraph	70,686,904	N. R.	12-31-20	Poor's
4	Standard Oil of California	41,655,254	N. R.	12-31-20	Poor's
5	Standard Oil of Indiana	40,973,484	N. R.	12-31-20	SCR
6	Standard Oil of New York	39,405,631	N. R.	12-31-20	Poor's
7	General Motors Corporation	37,883,521	567,320,903	12-31-20	SCR
8	Union Pacific R. R. Co	36,264,320	a209,049,510	12-31-20	SCR
9	Texas Corporation	31,089,372	N. R.	12-31-20	SCR
10	United Fruit Company	29,008,307	N. R.	12-31-20	SCR
11	Gulf Oil Corp. of Penna	28,543,157	159,575,090	12-31-20	SCR
12	Empire Gas & Fuel Co	23,382,676	N. R.	12-31-20	Moody
13	Cities Service Company	23,319,243	N. R.	12-31-20	Poor & Moody
14	Chicago, Burlington & Quincy R. R.	22,924,364	N. R.	12-31-20	Poor's
15	Jones & Laughlin Steel Corp	22,611,085	N. R.	12-31-20	Poor's
16	General Electric Company	22,132,288	275,758,488	12-31-20	SCR
17	Eastman Kodak Company	18,566,211	N. R.	12-31-20	SCR
18	Sinclair Cons. Oil Corp	18,558,581	b166,648,932	12-31-20	SCR
19	Del., Lackawanna & Western R. R	17,168,123	a83,340,062	12-31-20	SCR

N. R.—Not reported. SCR—Standard Corporation Records. a—Operating revenue. b—Gross revenue.

TABLE IV—Continued

No.	Name of company	1920 Net income	1920 Sales	Year ending	Source of data
20	International Harvester Company	$16,655,353	N. R.	12-31-20	SCR
21	American Tobacco Company	15,151,155	N. R.	12-31-20	SCR
22	Du Pont de Nemours	14,563,232	93,983,292	12-31-20	SCR
23	Bethlehem Steel Corporation	14,458,835	274,431,236	12-31-20	SCR
24	Mid-Continent Pet. Corp.	13,552,108	N. R.	12-31-20	SCR
25	Western Union Telegraph Company	13,303,122	a119,991,825	12-31-20	SCR
26	Pan American Pet. & Trans. Co	12,987,753	N. R.	12-31-20	SCR
27	Pullman, Inc.	12,913,509	N. R.	7-31-20	Poor's
28	Westinghouse Electric & Mfg. Co.	12,617,536	b150,980,106	3-31-21	Poor's
29	Corn Products Refining Company	12,591,480	N. R.	12-31-20	SCR
30	Cuban Cane Products Co., Inc.	12,344,135	N. R.	9-20-20	SCR
31	Republic Steel Corporation	*12,335,185	N. R.	12-31-20	SCR
32	Cuban American Sugar Company	12,186,897	b90,413,179	12-31-20	SCR
33	International Paper & Power Co.	12,055,902	N. R.	12-31-20	Poor's
34	Union Oil Co. of California	12,038,881	63,430,146	12-31-20	SCR
35	Atchison, Topeka & Santa Fe Ry.	12,012,383	a228,925,070	12-31-20	SCR
36	Crucible Steel Co. of America	11,956,690	N. R.	8-31-20	SCR
37	Sears, Roebuck & Company	11,846,671	254,595,059	12-31-20	SCR
38	Wheeling Steel Corporation	11,276,272	99,822,887	12-31-20	SCR
39	Reynolds (R. J.) Tobacco Co.	10,691,294	N. R.	12-31-20	SCR
40	Atlantic Refining Company	10,513,694	a169,272,130	12-31-20	SCR
41	Studebaker Corporation	9,822,054	90,652,362	12-31-20	SCR
42	Woolworth (F. W.) & Company	9,775,252	140,918,981	12-31-20	SCR
43	Reading Company	9,721,743	N. R.	12-31-20	Poor's
44	Firestone & Rubber Company	9,396,912	114,980,969	10-31-20	Poor's
45	Central Aguirre Association	9,178,491	N. R.	7-31-20	SCR
46	Tide Water Associated Oil Co.	9,106,003	60,077,032	12-31-20	Poor's
47	Crane Company	8,969,311	N. R.	12-31-20	Chron.
48	Prairie Pipe Line Company	8,932,323	b27,317,238	12-31-20	SCR
49	Southern Pacific Company	8,905,268	a284,851,268	12-31-20	SCR
50	Pittsburgh Plate Glass Company	8,595,916	N. R.	12-31-20	SCR
[fol. 1077]					
51	American Car & Foundry Co.	8,550,855	N. R.	4-30-21	SCR

52	Allied Chemical & Dye Corp	8,420,324	N. R.	12-31-20	SCR
53	Vacuum Oil Company	8,386,784	N. R.	12-31-20	SCR
54	Inter. Mercantile Marine	8,307,284	N. R.	12-31-20	SCR
55	Liggett & Myers Tobacco Co	7,597,803	N. R.	12-31-20	SCR
56	New Jersey Zinc Co. (The)	7,583,863	N. R.	12-31-20	SCR
57	Humble Oil & Refining Co	*7,473,459	*32,538,070	12-31-20	Poor's
58	American Power & Light Co	7,431,310	N. R.	12-31-20	Moody's
59	Baltimore & Ohio R. R. Co	7,245,480	N. R.	12-31-20	SCR
60	Youngstown Sheet & Tube Co	7,216,112	N. R.	12-31-20	SCR
61	American Smelting & Refining Co	7,160,421	N. R.	12-31-20	SCR
62	American Locomotive Co	7,111,126	N. R.	12-31-20	SCR
63	Nash Motors Company	7,007,471	57,185,766	11-30-20	Poor's
64	Gillette Safety Razor Co	6,803,407	N. R.	12-31-20	Poor's
65	American Rad. & Standard San. Corp	6,410,207*	N. R.	12-31-20	Poor's
66	Packard Motor Car Company	6,395,468	58,894,525	8-31-20	SCR
67	Central Pacific Ry. Co	6,335,909	N. R.	12-31-20	Poor's
68	Inter. Shoe Company	6,270,234	N. R.	11-30-20	Poor's
69	New York Edison Company	6,234,299	b33,806,849	12-31-20	Moody's
70	New England Tel. & Tel. Co	6,137,545	b34,273,897	12-31-20	Moody's
71	Clev., Cin., Chic. & St. L. Ry. Co	5,888,779	N. R.	12-31-20	Poor's
72	Great Northern Iron Ore Prop	5,854,856	N. R.	12-31-20	Poor's
73	National Biscuit Company	5,543,120	N. R.	12-31-20	SCR
74	Columbia Gas & Elec. Corp	5,533,794	N. R.	12-31-20	Poor's
75	South Penn. Oil Co	5,489,591	N. R.	12-31-20	Moody's
76	Philadelphia Company	5,488,716	b16,566,668	12-31-20	Poor's '23
77	Fajardo Sugar Co. of Porto Rico	5,456,917	N. R.	7-31-20	Poor's
78	Westinghouse Air Brake Co	5,330,464	N. R.	12-31-20	SCR
79	Paramount Publix Corp	5,321,240	N. R.	12-25-20	SCR
80	Armour & Co. (Ill.)	5,319,974	N. R.	10-30-20	P. & M.
81	South Porto Rico Sugar Co	5,278,277	22,250,851	9-30-20	SCR
82	Pure Oil Company	5,213,219	72,977,460	3-31-21	SCR
83	Swift & Company	5,170,383	*1,100,000,000	11- 1-20	SCR
84	National Supply Co. of Del. (The)	5,167,850f	N. R.	12-31-20	SCR
85	Ewa Plantation Company	5,119,898	N. R.	12-31-20	Poor's

N. R.—Not reported. SCR—Standard Corporation Records. b—Gross revenue. *—Estimated. a—Total operating revenue.

TABLE IV—Continued

No.	Name of company	1920 Net income	1920 Sales	Year ending	Source of data
86	Hanna (M. A.) Co. (The)	$4,946,481	N. R.	12-31-20	Poor's
87	American Can Co	4,830,918	N. R.	12-31-20	SCR
88	National Lead Co	4,735,509	N. R.	12-31-20	SCR
89	Standard Oil (Ohio)	4,722,012	N. R.	12-31-20	SCR
90	Bibb Manufacturing Co	k4,715,817	N. R.	8-31-20	Moody's
91	May Dept. Stores	4,708,674	68,254,715	1-31-21	SCR
92	Commonwealth Edison Co	4,708,402	b35,317,135	12-31-20	SCR
93	Elec. Storage Battery Co	4,692,478	N. R.	12-31-20	SCR
94	Union Tank Car Company	4,679,544	N. R.	12-31-20	SCR
95	Deere & Company	4,647,718	N. R.	10-31-20	SCR
96	Sherwin-Williams Co. (The)	4,532,637	N. R.	8-31-20	Poor's
97	Baldwin Locomotive Works (The)	4,428,518	73,542,666	12-31-20	SCR
98	American Sugar Refining Co	4,404,916	N. R.	12-31-20	SCR
99	Burroughs Adding Machine Co	4,289,869	41,072,788	12-31-20	SCR
100	Great Western Sugar Co	4,264,171	N. R.	2-28-21	SCR
[fol. 1078]					
101	California Packing Corporation	4,253,015	N. R.	2-28-21	Poor's
102	Owens-Illinois Glass Company	4,222,205	N. R.	12-31-20	SCR
103	American Steel Foundries	4,165,228	N. R.	12-31-20	SCR
104	Inland Steel Company	4,107,061	N. R.	12-31-20	SCR
105	Lehigh Coal & Navigation Company	4,045,053	N. R.	12-31-20	SCR
106	Pacific Gas & Electric Company	3,922,061	b34,475,372	12-31-20	SCR
107	Ingersoll-Rand Company	3,885,928	N. R.	12-31-20	Poor's
108	Michigan Central R. R. Co	3,805,785	N. R.	12-31-20	Poor's
109	Drug, Inc	f3,797,997	N. R.	12-31-20	SCR
110	Standard Oil of Kentucky	3,770,260	N. R.	12-31-20	SCR
111	Johns-Manville Corp	3,703,314	45,138,181	12-31-20	Poor's
112	Allis-Chalmers Mfng. Co	3,564,249	p31,516,209	12-31-20	SCR
113	Waialua Agric. Company Ltd	3,504,722	N. R.	12-31-20	Poor's
114	North American Company	3,438,039	39,611,162	12-31-20	SCR
115	Fleischmann Company (The)	3,409,479	34,320,910	12-31-20	Poor's & Moody
116	General Cigar Company	3,400,420	N. R.	12-31-20	SCR

117	Duquesne Light Company	3,362,347	N. R.	12-31-20	SCR
118	American Rolling Mills Company	3,344,868	N. R.	12-31-20	Poor's
119	Texas Gulf Sulphur Company	3,327,031	8,153,871	12-31-20	SCR
120	U. S. Industrial Alcohol Company	3,268,924	N. R.	12-31-20	SCR
121	Wrigley (Wm.) Jr., Company	3,29[illegible],748	N. R.	12-31-20	SCR
122	Endicott Johnson Corporation	3,242,363	74,970,103	12-31-20	SCR
123	Virginian R. R. Co	3,122,155	a18,158,853	12-31-20	SCR
124	Southern California Edison Co., Ltd	3,074,796	b14,647,896	12-31-20	SCR
125	Montana Power Company (The)	3,057,723	N. R.	12-31-20	Poor & Moody
126	American Light and Traction	3,051,414	N. R.	12-31-20	Poor's
127	St. Joseph Lead Company	3,011,426	N. R.	12-31-20	SCR
128	Libby, McNeill & Libby	2,921,033	N. R.	j3- 5-21	Poor's
129	U. S. Smelting, Refng. & Mng. Co	i2,909,275	N. R.	12-31-20	SCR
130	Philadelphia Electric Company	2,900,259	b20,043,336	12-31-20	Moody's
131	Miami Copper Company	e2,888,478	N. R.	12-31-20	SCR
132	Otis Elevator	2,880,277	N. R.	12-31-20	SCR
133	Harbison-Walker Refractories Co	2,869,996	N. R.	12-31-20	Poor's
134	Eastern Gas & Fuel Associates	2,854,480	N. R.	12-31-20	SCR
135	Edison Electric Illuminating Co	2,801,530	b16,162,568	6-30-21	SCR
136	Borden Company (The)	2,789,621	120,293,573	12-31-20	SCR
137	Northern Pacific R. R. Company	2,773,313	a113,084,408	12-31-20	SCR
138	Kresge (S. S.) Company	2,753,506	51,245,311	12-31-20	SCR
139	Cincinnati, New Orleans & Tex. Pac.	*2,728,635	N. R.	12-31-20	Poor's
140	Goodrich (B. F.) Company	2,711,287	150,007,346	12-31-20	SCR
141	Anaconda Copper & Mining Co	2,691,661	b71,589,791	12-31-20	SCR
142	Fairbanks Morse & Company	2,678,736	N. R.	12-31-20	Poor & Moody
143	Manati Sugar Company	2,668,131	N. R.	10-31-20	SCR
144	Honolulu Plantation Company	2,650,919	N. R.	12-31-20	Poor & Moody
145	Island Creek Coal Company	2,647,017	N. R.	12-31-20	SCR
146	Mack Trucks, Inc	2,644,014	34,071,366	12-31-20	SCR
147	Barnsdall Corp	2,615,414	7,105,715	12-31-20	SCR
148	National Fuel Gas Company	2,615,273	N. R.	12-31-20	SCR
149	Hawaiian Sugar Company	2,608,953	N. R.	12-31-20	Moody
150	Colorado & Southern R. R. Company	2,606,066	N. R.	12-31-20	Poor's

N. R.—Not reported. SCR—Standard Corporation Records. *—Estimated. a—Total operating revenue.
b—Gross revenue. e—Before depletion. f—Predecessor Corp. i—Before additional reserves. j—10 mos. ending 3/5/21.
p—Billings to customers.

[fol. 1079]

TABLE IV—Continued

No.	Name of company	1920 Net income	1920 Sales	Year ending	Source of data
151	Underwood Elliott Fisher Co	$2,579,547	N. R.	12-31-20	SCR
152	American Brake Shoe & Foundry Co	2,568,013	N. R.	12-31-20	SCR
153	Torrington Co. (The) (of Maine)	2,556,963	N. R.	6-30-20	Moody's
154	Parke, Davis & Co	2,494,670	$26,475,715	12-31-20	Poor's
155	U. S. Realty & Improvement Co	2,487,803	5,040,099	4-30-21	SCR
156	Atlas Powder Company	2,467,095	24,393,569	12-31-20	SCR
157	National Acme Co. (The)	2,455,337	15,758,921	12-31-20	Poor's
158	American Bank Note Co	2,450,946	N. R.	12-31-20	SCR
159	Timken Roller Bearing Co	2,449,147	N. R.	12-31-20	SCR
160	Great A. & P. Tea Company	2,437,297	235,302,887	2-28-21	Moody's
161	Mergenthaler Linotype Co	2,430,732	N. R.	9-30-20	SCR
162	White Motor Co	2,410,014	51,998,122	12-31-20	SCR
163	Yale & Towne Mfg. Co	2,398,636	N. R.	12-31-20	SCR
164	Bliss (E. W.) Co	2,376,338	N. R.	12-31-20	Poor's
165	Hupp Motor Car Corp	2,366,389	26,263,007	12-31-20	Poor's '24
166	Union Elec. Light & Power Co. (Mo.)	2,342,423g	b9,882,232	12-31-20	Moody's
167	United Gas Improvement Co	2,303,876	N. R.	12-31-20	SCR
168	Pittsburgh Steel Co	2,300,745	27,483,107	6-30-20	SCR
169	Inspiration Cons. Copper Co	2,294,276e	10,633,707	12-31-20	SCR
170	Stewart-Warner Corp	2,290,195	N. R.	12-31-20	SCR
171	American Stores Co	2,249,454	103,059,303	12-31-20	P. & M.
172	N. Y., Chic. & St. Louis R. R. Co	2,248,851	a23,953,824	12-31-20	Poor's
173	Public Serv. Corp. of N. J.	2,218,408	N. R.	12-31-20	SCR
174	Babcock & Wilcox Co	2,207,803	N. R.	12-31-20	Poor's
175	General American Tank Car Corp	2,169,075	33,788,836	12-31-20	Poor's
176	Northern Central Railway Co	2,166,368	N. R.	12-31-20	Poor's
177	Coca-Cola Company	2,139,166	32,341,429	12-31-20	SCR
178	Electric Bond & Share	2,127,600	N. R.	12-31-20	P. & M.
179	American Cyanamid Co	n2,094,852	9,009,506	6-30-20	Poor's
180	Loew's Inc	2,057,432	21,060,672	8-31-20	SCR
181	Alabama Great Southern R. R. Co	2,056,963	a11,703,433	12-31-20	Moody's
182	Chile Copper Co	e2,056,405	N. R.	12-31-20	SCR
183	Worthington Pump & Mach. Corp	2,030,923	p27,924,745	12-31-20	SCR
184	Hart, Schaffner & Marx	2,013,055	N. R.	11-30-20	Poor's
185	Libbey-Owens Ford Glass Co	2,001,688	N. R.	9-30-20	SCR

N. R.—Not reported. SCR—Standard Corporation Records. a—Total operating revenue. b—Gross revenue.
e—Before depreciation. n—Before taxes. p—Railway by companies.